

MONTANA LEGISLATIVE HISTORY

Chapter 275 19 81

Bill H 238 S _____ Original bills & history ☒ c

H. Committee on Bus & Ind.

Hearing Date(s) 1/23 ☒ c

_____ c

_____ c

1/26 ☒ c

Date Out 1/26 ☒ c

S. Committee on Bus & Ind.

Hearing Date(s) 3/4 ☒ c

3/7 ☒ c

3/11 _____ c

3/14 _____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

CHAPTER 275 (HB 238) AND CHAPTER 276 (HB 239) HAVE INTEGRATED LEGISLATIVE HISTORIES BECAUSE THE LEGISLATURE HELD HEARINGS FOR THEM SIMULTANEOUSLY.

MT LEGISLATIVE HISTORY

Chapter 276 1981

Bill (H) 239 S _____

Original bill & hist. X C

H. Committee on Business & Industry

S. Committee on Business & Industry

Hearing Date(s) Jan 23 ✓ C

Hearing Date(s) Mar 04 ✓ C

Jan 26 ✓ C

Mar 07 ✓ C

Jan 29 ✓ C

Mar 11 ✓ C

_____ C

Mar 14 ✓ C

Date Out Jan 29 ✓ C

Mar 14 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

CHAPTER 275 (HB 238) AND CHAPTER 276 (HB 239) HAVE INTEGRATED LEGISLATIVE HISTORIES BECAUSE THE LEGISLATURE HELD HEARINGS FOR THEM SIMULTANEOUSLY.

BUSINESS & INDUSTRY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 206	To delete the requirement that the amount of insurance coverage be considered value of improvements upon real property in case of loss due to fire; amend 33-24-102.	1/14	Keedy	1/21	DO NOT PASS	1/21/81
HB 235 F.N.	To provide bonuses for owners of Montana-bred horses from the gross receipts from parimutuel betting at certain racetracks.	1/14	Burnett Curtiss Devlin (Others)	1/26	DO NOT PASS	1/26/81
HB 224	To provide for the transition from state-operated state liquor stores to state liquor stores operated under agency agreements; providing certain rights for existing employees;	1/15	Moore Lee	1/29	DO NOT PASS	1/30
HB 238	providing an immediate effective date; amend 16-2-101. To exempt regulated lenders from limitations on the rate of interest which regulated lenders may charge	1/15	Fabrega Goodover Sivertsen (Others)	1/23	DO PASS	1/29/81
HB 239	and to exempt regulated lenders from all usury statutes; amend... To eliminate usury limits under the Montana retail installment sales act; amend ...	1/15	Fabrega Goodover Wallin	1/23	DO PASS AS AMENDED	1/29/81
HB 240	To remove limitation on interest rates for financing the retail installment sale of motor vehicles; amend 31-1-241; immediate effective date.	1/15	Fabrega Goodover Wallin (Others)	1/23	TABLED 2/12/81	

HOUSE BILL NO. 238

INTRODUCED BY FABREGA, GOODOVER, SIVERTSEN, SALES,
THOMAS, HARPER, PISTORIA, VINGER, FEDA, PHILLIPS

IN THE HOUSE

January 15, 1981	Introduced and referred to Committee on Business and Industry.
January 30, 1981	Committee recommend bill do pass. Report adopted.
January 31, 1981	Bill printed and placed on members' desks.
February 2, 1981	Second reading, pass consideration until February 3, 1981.
February 3, 1981	Second reading, do pass.
February 4, 1981	Considered correctly engrossed.
February 6, 1981	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 7, 1981	Introduced and referred to Committee on Business and Industry.
March 9, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 10, 1981	Second reading, pass consideration. On motion taken from second reading and referred to Committee on Business and Industry. Motion adopted.
March 16, 1981	Committee recommend bill be concurred in as amended. Report adopted.

March 18, 1981

Second reading, concurred in.

March 20, 1981

Third reading, concurred in
as amended. Ayes, 42; Noes,
6.

IN THE HOUSE

March 21, 1981

Returned from Senate with
amendments.

March 24, 1981

Second reading, amendments
concurred in.

March 26, 1981

Third reading, amendments
concurred in. Ayes, 88;
Noes, 8. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 238

INTRODUCED BY *Felipe Gordon Livintay Phillips*
House Representative Vignar Jada Sins

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT REGULATED LENDERS FROM LIMITATIONS ON THE RATE OF INTEREST WHICH REGULATED LENDERS MAY CHARGE AND TO EXEMPT REGULATED LENDERS FROM ALL USURY STATUTES; AMENDING SECTIONS 31-1-106, 31-1-107, 32-2-402, AND 32-3-601, MCA; REPEALING SECTION 32-1-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definition. The term "regulated lenders" as used in [section 2] means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection

(1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money.

NEW SECTION. Section 2. Exemption. A regulated lender is exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect of all usury statutes.

Section 3. Section 31-1-106, MCA, is amended to read:

"31-1-106. Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code or [sections 1 and 2], unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of 6% a year after they become due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and
 (d) moneys received for the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year."

Section 4. Section 31-1-107, MCA, is amended to read:

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1 "31-1-107. Interest rate allowed by agreement. (1) On
2 amounts up to \$150,000, parties may agree in writing for the
3 payment of any rate of interest not more than 10% per annum
4 or more than 4 percentage points in excess of the discount
5 rate on 90-day commercial paper in effect at the federal
6 reserve bank in the ninth federal reserve district,
7 whichever is greater, and such interest shall be allowed
8 according to the terms of the agreement.

9 (2) On amounts exceeding \$150,000 and up to \$300,000,
10 parties may agree in writing for the payment of any rate of
11 interest not more than 10% per annum or more than 5
12 percentage points in excess of the discount rate on 90-day
13 commercial paper in effect at the federal reserve bank in
14 the ninth federal reserve district, whichever is greater,
15 and such interest shall be allowed according to the terms of
16 the agreement.

17 (3) On amounts exceeding \$300,000, parties may agree
18 in writing to the payment of any rate of interest, without
19 limitation, and such interest shall be allowed according to
20 the terms of the agreement.

21 (4) The provisions of this section do not apply to
22 regulated lenders as defined in [section 11]."

23 Section 5. Section 32-2-402, MCA, is amended to read:

24 "32-2-402. Limit on interest and penalties. (1) The
25 combined--total--of--the--amounts-paid-to-an-association-for

1 interest,--commissions,--bonuses,--discounts,--and--other--similar
2 charges,--less--a--proper--deduction--for--all--dividends,--refunds,
3 and--cash--credits--of--all--kinds,--shall--not--create--an--actual
4 net--cost--to--the--borrower--in--excess--of--the--maximum--lawful
5 contract--rate--of--interest--in--this--state,--interest--not
6 exceeding--the--maximum--lawful--contract--rate--may--also--be
7 charged--on--unpaid--interest,--principal--payments--or--both,
8 from--the--time--those--interest--payments--are--due. Interest not
9 exceeding the lawful contract rate may also be charged and
10 collected on delinquent stock payments when those unpaid
11 payments are credited with dividends. The interest shall in
12 no event be at a rate exceeding the rate percent of the
13 dividend declared on the same unpaid stock payments.

14 (2) An association may not charge or collect from a
15 stockholder, member, or borrower any fines, premiums, or
16 penalties of any kind; except that a late payment penalty
17 not to exceed \$5 may be charged for payments more than 15
18 days late.

19 (3) An officer, agent, or employee of an association
20 collecting or attempting to collect a penalty, fine, or
21 premium of any kind, except the late payment penalty, or
22 interest at a rate higher than provided in the note or other
23 evidence of debt or in this chapter is guilty of a
24 misdemeanor."

25 Section 6. Section 32-3-601, MCA, is amended to read:

1 "32-3-601. Loans -- purposes, terms, and interest
2 rate. A credit union may loan to members for such purpose
3 and upon such security and terms as the credit committee,
4 credit manager, or loan officer approves ~~at--rates--of~~
5 ~~interest--not--exceeding--1-1/4%--per--month--on--the-unpaid~~
6 ~~monthly-balances."~~

7 Section 7. Repealer. Section 32-1-436, MCA, is
8 repealed.

9 Section 8. Effective date. This act is effective on
10 passage and approval.

-End-

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HOUSE BILL NO. 239

INTRODUCED BY FABREGA, GOODOVER, WALLIN, MOORE,
VINGER, NORDTVEDT, MEYER, SALES

IN THE HOUSE

January 15, 1981	Introduced and referred to Committee on Business and Industry.
January 30, 1981	Committee recommend bill do pass as amended. Report adopted.
February 2, 1981	Bill printed and placed on members' desks.
February 3, 1981	Second reading, do pass.
February 4, 1981	Correctly engrossed.
February 6, 1981	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 7, 1981	Introduced and referred to Committee on Business and Industry.
March 9, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 10, 1981	Second reading, pass consideration. On motion taken from second reading and referred to Committee on Business and Industry. Motion adopted.
March 16, 1981	Committee recommend bill be concurred in as amended. Report adopted.

March 18, 1981

Second reading, concurred in.

March 20, 1981

Third reading, concurred in as amended. Ayes, 43; Noes, 5.

IN THE HOUSE

March 21, 1981

Returned from Senate with amendments.

March 24, 1981

Second reading, amendments not concurred in.
Ayes 83; Noes, 8.

Motion to reconsider the Senate amendments and place on second reading. Motion adopted.

March 25, 1981

Second reading, amendments concurred in.

March 27, 1981

Third reading, amendments concurred in. Ayes, 73; Noes, 10.
Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 239

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE USURY
LIMITS UNDER THE MONTANA RETAIL INSTALLMENT SALES ACT;
AMENDING SECTIONS 31-1-241 AND 31-1-243, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 31-1-241, MCA, is amended to read:

"31-1-241. Finance charge limitation. (1)

Notwithstanding the provisions of any other law, the finance
charge included in a retail installment contract shall not
exceed the following schedule:

(a) as to motor vehicles:

(i) class 1--any new motor vehicle designated by the
manufacturer by a year model not earlier than the year in
which the sale is made, \$7 per \$100 per year;

(ii) class 2--any new motor vehicle not in class 1 and
any used motor vehicle designated by the manufacturer by a
year model of the same or not more than 2 years prior to the
year in which the sale is made, \$9 per \$100 per year;

(iii) class 3--any used motor vehicle not in class 2
and designated by the manufacturer by a year model more than
2 years prior to the year in which the sale is made, \$11 per
\$100 per year;

(b) as to any industrial or construction equipment
primarily designed for or used in construction, logging,
mining or other industrial business, the price of which is
over \$5,000, \$9 per \$100 per year; this subsection shall not
apply to agricultural equipment;

(c) as to any manufactured structure or recreational
vehicle, \$9 per \$100 per year;

(d) as to services and goods other than as provided
under subsections (1)(a), (1)(b), and (1)(c) above:

(i) on so much of the principal balance as does not
exceed \$300, \$11 per \$100 per year;

(ii) if the principal balance exceeds \$300 but is less
than \$1,000, \$9 per \$100 per year on that portion over \$300;

(iii) if the principal balance exceeds \$1,000, \$7 per
\$100 per year on that portion over \$1,000;

(2) such finance charge shall be computed on the
principal balance as determined under 31-1-21(5) on
contracts payable in successive monthly payments
substantially equal in amount from the date of the contract
until the maturity of the final installment, notwithstanding
that the total time balance thereof is required to be paid
in installments. A minimum finance charge of \$26 may be
charged on any retail installment contracts.

(3) When a retail installment contract provides for
payment other than in equal successive monthly installments,

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1 the finance charge may be a rate which will provide the same
2 yield as is permitted on monthly payment contracts under
3 subsections (1) and (2) hereof, having due regard for the
4 schedule of payments in the contract.

5 (4) Notwithstanding the provisions of any other law or
6 regulation, a charge account agreement may provide for and the
7 seller or holder may charge, collect, and receive a finance
8 charge as specified herein for the privilege of paying in
9 installments thereunder. The finance charge may be computed
10 from month to month (which need not be a calendar month) or
11 other regular billing cycle period by applying a rate not to
12 exceed $1\frac{1}{2}\%$ for each such monthly period to an amount (not
13 including any unpaid finance charge) not in excess of the
14 greatest of:

15 (a) the average daily balance in the account in the
16 billing cycle period;

17 (b) the ending balance of the account as of the last
18 day of the billing cycle less the amount of purchases
19 charged to the account during that billing cycle; or

20 (c) the median amount within a \$10 range within which
21 such average daily balance or beginning balance falls,
22 provided the seller applies the same rate of finance charge
23 to all such balances within such range.

24 (5) If the finance charge so determined pursuant to
25 (4) above for such monthly period is less than 59 cents, the

1 maximum finance charge not in excess of 59 cents may be
2 charged, received, and collected for such period as at a
3 rate agreed upon by the retail seller and the buyer."

4 Section 2. Section 31-1-243, MCA, is amended to read:

5 "31-1-243. Refinancing retail installment contract.

6 The holder of a contract, upon request by the buyer, may
7 extend the scheduled due date of all or any part of any
8 installment or installments or defer payment or payments or
9 renew or restate the unpaid time balance of such contract,
10 the amount of the installments, and the time schedule
11 therefor and may collect for such extension, deferment,
12 renewal, or restatement a refinance charge. The holder may
13 compute the refinance charge on the unpaid time balance to
14 be extended, deferred, renewed, or restated by adding to
15 such unpaid time balance the cost for any insurance and
16 other benefits incidental to the refinancing plus any
17 accrued delinquency and collection charges, after deducting
18 any refund which may be due the buyer as for a prepayment
19 pursuant to 31-1-242 at the rate of the finance charge
20 specified in 31-1-241(1) and by reclassifying in the case of
21 motor vehicles by its then year model for the term of the
22 refinancing agreement but otherwise subject to the
23 provisions of this part governing computation of the
24 original finance charges. The provisions of this part
25 relating to minimum finance charges under 31-1-241(2) shall

1 ~~not apply in calculating refinance charges on the contract~~
 2 ~~extended, deferred, renewed, or restated.~~ If all unpaid
 3 installments are deferred for not more than 2 months, the
 4 holder may at his election charge and collect for such
 5 deferment an amount equal to the difference between the
 6 refund required for prepayment in full under 31-1-242 as of
 7 the scheduled due date of the first deferred installment and
 8 the refund required for prepayment in full as of 1 month
 9 prior to said date, times the number of months in which no
 10 scheduled payment is made."

-End-

HOUSE BILL NO. 239

INTRODUCED BY FABREGA, GOODOVER, WALLIN, MOORE,

VINGER, NORDTVEIT, MEYER, SALES

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE USURY
LIMITS UNDER THE MONTANA RETAIL INSTALLMENT SALES ACT;
AMENDING SECTIONS 31-1-241 AND 31-1-243, MCA; PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 31-1-241, MCA, is amended to read:

"31-1-241. Finance charge limitation. ~~(1)~~ (1)
Notwithstanding the provisions of any other law, the finance
charge included in a retail installment contract shall not
exceed the following schedule:

(a) as to motor vehicles:

(i) class 1--any new motor vehicle designated by the
manufacturer by a year model not earlier than the year in
which the sale is made, \$7 per \$100 per year;

(ii) class 2--any new motor vehicle not in class 1 and
any used motor vehicle designated by the manufacturer by a
year model of the same or not more than 2 years prior to the
year in which the sale is made, \$9 per \$100 per year;

(iii) class 3--any used motor vehicle not in class 2
and designated by the manufacturer by a year model more than

2 years prior to the year in which the sale is made, \$11 per
\$100 per year;

(b) as to any industrial or construction equipment
primarily designed for or used in construction, logging,
mining, or other industrial business, the price of which is
over \$5,000, \$9 per \$100 per year. This subsection shall not
apply to agricultural equipment;

(c) as to any manufactured structure or recreational
vehicle, \$9 per \$100 per year;

(d) as to services and goods other than as provided
under subsections (1)(a), (1)(b), and (1)(c) above;

(i) on so much of the principal balance as does not
exceed \$300, \$11 per \$100 per year;

(ii) if the principal balance exceeds \$300 but is less
than \$1,000, \$9 per \$100 per year on that portion over \$300;

(iii) if the principal balance exceeds \$1,000, \$7 per
\$100 per year on that portion over \$1,000;

(2) Such finance charge shall be computed on the
principal balance as determined under 31-1-231(5) on
contracts payable in successive monthly payments
substantially equal in amount from the date of the contract
until the maturity of the final installment, notwithstanding
that the total time balance thereof is required to be paid
in installments. A minimum finance charge of \$20 may be
charged on any retail installment contract.

1 {3}--When--a--retail--installment--contract--provides--for
2 payment--other--than--in--equal--successive--monthly--installments--
3 the--finance--charge--may--be--a--rate--which--will--provide--the--same
4 yield--as--is--permitted--on--monthly--payment--contracts--under
5 subsections--(1)--and--(2)--hereof--having--due--regard--for--the
6 schedule--of--payments--in--the--contract--

7 {4}--Notwithstanding--the--provisions--of--any--other--law--a
8 retail--charge--account--agreement--may--provide--for--and--the
9 seller--or--holder--may--charge--collect--and--receive--a--finance
10 charge--as--specified--herein--for--the--privilege--of--paying--in
11 installments--thereunder--The--finance--charge--may--be--computed
12 from--month--to--month--(which--need--not--be--a--calendar--month)--or
13 other--regular--billing--cycle--period--by--applying--a--rate--not--to
14 exceed--1-1/2%--for--each--such--monthly--period--to--an--amount--(not
15 including--any--unpaid--finance--charge)--not--in--excess--of--the
16 greatest--of--

17 (a)--the--average--daily--balance--in--the--account--in--the
18 billing--cycle--period--

19 (b)--the--ending--balance--of--the--account--as--of--the--last
20 day--of--the--billing--cycle--less--the--amount--of--purchases
21 charged--to--the--account--during--that--billing--cycle--or

22 (c)--the--median--amount--within--a--\$10--range--within--which
23 such--average--daily--balance--or--beginning--balance--falls--
24 provided--the--seller--applies--the--same--rate--of--finance--charge
25 to--all--such--balances--within--such--range--

1 {5}--If--the--finance--charge--so--determined--pursuant--to
2 {4}--above--for--such--monthly--period--is--less--than--50--cents--a
3 maximum--finance--charge--not--in--excess--of--50--cents--may--be
4 charged--received--and--collected--for--such--period--at a
5 rate agreed upon by the retail seller and the buyer.

6 (2) NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW--A
7 RETAIL--CHARGE--ACCOUNT--AGREEMENT--MAY--PROVIDE--FOR--AND--THE
8 SELLER--OR--HOLDER--MAY--CHARGE--COLLECT--AND--RECEIVE--A--FINANCE
9 CHARGE--AS--SPECIFIED--HEREIN--FOR--THE--PRIVILEGE--OF--PAYING--IN
10 INSTALLMENTS--THEREUNDER THE FINANCE CHARGE INCLUDED IN A
11 RETAIL CHARGE ACCOUNT AGREEMENT SHALL BE AT A RATE AGREED
12 UPON BY THE RETAIL SELLER AND THE BUYER. THE FINANCE CHARGE
13 MAY SHALL BE COMPUTED FROM MONTH TO MONTH (WHICH NEED NOT BE
14 A CALENDAR MONTH) OR OTHER REGULAR BILLING CYCLE PERIOD BY
15 APPLYING--A--RATE--NOT--TO--EXCEED--1-1/2%--FOR--EACH--SUCH--MONTHLY
16 PERIOD--TO--AN--AMOUNT--(NOT--INCLUDING--ANY--UNPAID--FINANCE
17 CHARGE)--NOT--IN--EXCESS--OF--THE--GREATEST--OF--

18 (a) --THE--AVERAGE--DAILY--BALANCE--IN--THE--ACCOUNT--IN--THE
19 BILLING--CYCLE--PERIOD--

20 (b) USING THE ENDING BALANCE OF THE ACCOUNT AS OF THE
21 LAST DAY OF THE BILLING CYCLE LESS THE AMOUNT OF PURCHASES
22 CHARGED TO THE ACCOUNT DURING THAT BILLING CYCLE--OR

23 (c) --THE--MEDIAN--AMOUNT--WITHIN--A--\$10--RANGE--WITHIN--WHICH
24 SUCH--AVERAGE--DAILY--BALANCE--OR--BEGINNING--BALANCE--FALLS--
25 PROVIDED--THE--SELLER--APPLIES--THE--SAME--RATE--OF--FINANCE--CHARGE

~~TO ALL SUCH BALANCES WITHIN SUCH RANGE.~~

~~(1) IF THE FINANCE CHARGE SO DETERMINED PURSUANT TO~~

~~(2) ABOVE FOR SUCH MONTHLY PERIOD IS LESS THAN 50 CENTS, A~~

~~MAXIMUM FINANCE CHARGE NOT IN EXCESS OF 50 CENTS MAY BE~~

~~CHARGED, RECEIVED, AND COLLECTED FOR SUCH PERIOD.~~

(A) A SELLER MAY CHANGE THE TERMS OF A REVOLVING CHARGE ACCOUNT WHETHER OR NOT THE CHANGE IS AUTHORIZED BY PRIOR AGREEMENT. THE SELLER SHALL GIVE THE BUYER WRITTEN NOTICE OF ANY CHANGE IN THE TWO BILLING CYCLES PRIOR TO THE EFFECTIVE DATE OF THE CHANGE.

(B) IF THE RETAIL SELLER INCREASES HIS FINANCE CHARGE ON A RETAIL CHARGE ACCOUNT AGREEMENT, THEN SUCH INCREASED RATE MAY ONLY BE APPLIED TO THE BALANCE CONSISTING OF PURCHASES ON OTHER CHARGES INCURRED ON OR AFTER THE EFFECTIVE DATE OF THE INCREASE.

(C) FOR PURPOSES OF DETERMINING THE BALANCE TO WHICH THE INCREASED RATE APPLIES, ALL PAYMENTS MAY BE CONSIDERED TO BE APPLIED TO THE BALANCE EXISTING PRIOR TO THE CHANGE IN RATE UNTIL THAT BALANCE IS PAID IN FULL."

SECTION 2. SECTION 31-1-241, MCA, IS AMENDED TO READ:

"31-1-241. Finance charge limitation. (1)

Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

(a) as to motor vehicles:

(i) class 1--any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, \$7 per \$100 per year;

(ii) class 2--any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made, \$9 per \$100 per year;

(iii) class 3--any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than 2 years prior to the year in which the sale is made, \$11 per \$100 per year;

(b) as to any industrial or construction equipment primarily designed for or used in construction, logging, mining, or other industrial business, the price of which is over \$5,000, \$9 per \$100 per year. This subsection shall not apply to agricultural equipment.

(c) as to any manufactured structure or recreational vehicle, \$9 per \$100 per year;

(d) as to services and goods other than as provided under subsections (1)(a), (1)(b), and (1)(c) above:

(i) on so much of the principal balance as does not exceed \$300, \$11 per \$100 per year;

(ii) if the principal balance exceeds \$300 but is less than \$1,000, \$9 per \$100 per year on that portion over \$300;

(iii) if the principal balance exceeds \$1,000, \$7 per

1 \$100 per year on that portion over \$1,000.

2 (2) Such finance charge shall be computed on the
3 principal balance as determined under 31-1-231(5) on
4 contracts payable in successive monthly payments
5 substantially equal in amount from the date of the contract
6 until the maturity of the final installment, notwithstanding
7 that the total time balance thereof is required to be paid
8 in installments. A minimum finance charge of \$20 may be
9 charged on any retail installment contract.

10 (3) When a retail installment contract provides for
11 payment other than in equal successive monthly installments,
12 the finance charge may be a rate which will provide the same
13 yield as is permitted on monthly payment contracts under
14 subsections (1) and (2) hereof, having due regard for the
15 schedule of payments in the contract.

16 (4) Notwithstanding the provisions of any other law, a
17 retail charge account agreement may provide for and the
18 seller or holder may charge, collect, and receive a finance
19 charge as specified herein for the privilege of paying in
20 installments thereunder. The finance charge may be computed
21 from month to month (which need not be a calendar month) or
22 other regular billing cycle period by applying a rate not to
23 exceed 1 1/2% for each such monthly period to an amount (not
24 including any unpaid finance charge) ~~not-in-excess-of-the~~
25 ~~greatest-of~~

1 ~~(a) the average daily balance in the account in the~~
2 ~~billing cycle period;~~

3 ~~(b) by using the ending balance of the account as of~~
4 ~~the last day of the billing cycle less the amount of~~
5 ~~purchases charged to the account during that billing cycle;~~
6 ~~or~~

7 ~~(c) the median amount within a \$10 range within which~~
8 ~~such average daily balance or beginning balance falls,~~
9 ~~provided the seller applies the same rate of finance charge~~
10 ~~to all such balances within such range;~~

11 (a) A seller may change the terms of a revolving
12 charge account whether or not the change is authorized by
13 prior agreement. The seller shall give the buyer written
14 notice of any change in the two billing cycles prior to the
15 effective date of the change.

16 (b) If the retail seller increases his finance charge
17 on a retail charge account agreement, within the permitted
18 ceiling amount, then such increased rate may only be applied
19 to the balance consisting of purchases on other charges
20 incurred on or after the effective date of the increase.

21 (c) For purposes of determining the balance to which
22 the increased rate applies, all payments may be considered
23 to be applied to the balance existing prior to the change in
24 rate until that balance is paid in full.

25 (5) If the finance charge so determined pursuant to

(4) above for such monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged, received, and collected for such period."

Section 3. Section 31-1-243, MCA, is amended to read:

"31-1-243. Refinancing retail installment contract.

The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferment, renewal, or restatement a refinance charge. The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241(1) and by reclassifying in the case of motor vehicles by its then-year model for the term of the refinancing agreement but otherwise subject to the provisions of this part governing computation of the original finance charges. The provisions of this part relating to minimum finance charges under 31-1-241(2) shall

not apply in calculating refinance charges on the contract extended, deferred, renewed, or restated. If all unpaid installments are deferred for not more than 2 months, the holder may at his election charge and collect for such deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to said date, times the number of months in which no scheduled payment is made."

SECTION 4. MERCHANT FINANCE. A FINANCE OPERATION THAT FINANCES TRANSACTIONS BETWEEN MERCHANTS, AS DEFINED IN 30-2-104, IS ALSO EXEMPT FROM USURY LIMITS.

SECTION 5. EFFECTIVE DATE -- TERMINATION. (1) THIS ACT, EXCEPT AS PROVIDED IN SUBSECTION (2), IS EFFECTIVE ON PASSAGE AND APPROVAL AND TERMINATES ON JULY 1, 1983.

(2) SECTION 2 IS EFFECTIVE JULY 1, 1983.

-End-

HOUSE BILLS 238, 239, 240, 241, 242, 243, 244 -

REP. W. J. FABREGA, House District #44, Cascade County, chief sponsor explained these bills concern themselves with regulated lending institutions. Due to the fact that we have several credit acts in the statutes, all these bills are necessary in order to address the problem.

HB 238 deals with banks, savings and loans, co-ops and any agency of the federal or state government that is in a position to lend money and comes under regulation.

HB 239 addresses the retail sales credit act, and Rep. Fabrega opened the hearing with this bill because it does address the problem that the business community is experiencing with the present economic fluctuations. The Montana usury laws are determined for lenders by a floating formula based on the federal discount rate and allow so many points under one circumstance and so many more points for another circumstance. That indirectly controls the Retail Sales Credit Act as to the supply of money to people in the retail business. Credit is a convenience to their customers by offering financing of merchandise they sell. To compound that floating situation we have the present limited or ceiling interest rate that can be charged for retail sales financing.

There is an additional act that is the Consumer Finance Act. There is a bill coming on a bit later, sponsored by Rep. Fabrega, that addresses what is commonly known as the finance companies. Their operations do not enter into the bills being presented today.

HB 239 would simply remove all of the fictitious ceilings imposed in the years past in the retail sales financing. It scratches most of the present language - it goes from page 1, line 12 to page 4, line 2, and that is the whole substance of the bill. It reads "Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall be at a rate agreed upon by the retail seller and the buyer." That is the whole thrust of HB 239. We have tried so diligently in the past to determine what was thought would be a prudent ceiling for financing retail sales, but with the ever-changing economic conditions the merchants find themselves in a position of not being able to finance their sales. Take automobiles, unless you have a finance program through your manufacturer, you are totally out of the market because by the add-on rate, presently you can charge up to close to 13%, and yet banks are charging a friendly rate of 16-17%.

Supply and demand is what determines the cost of money, but we also have the federal ruling powers and the money market determines discount rates and so Montana is subject to decisions made in Washington even though they could have very little relationship to what is going on in Montana with the supply and demand of money.

JERRY RAUNIG, Executive Vice-President of the Montana Automobile Dealers Association (MADA), which is the trade association for the franchised new car and truck dealers of this state. See EXHIBIT A for a detailed analysis of the car dealers situation. Included is a chart of interest rates allowable on new vehicles as well as a chart showing

monthly payments at varying interest rates. He urged the committee to give HB 239 a Do Pass with an immediate effective date.

LARRY HUSS, Montana Savings and Loan League, Helena, thought a full appreciation of the problem that has been presented before the committee today necessitates a little understanding of the history of the term 'usury' and the law that controls it. Usury began back in pre-biblical times. It was a concept that was outlawed by the Jewish religion, by the Moslem religion, by the Buddhists. It is curious to note that in each one of those they permitted you to charge usury or interest to infidels, gentiles, non-believers. When the Christians took up the concept, they modified it somewhat and they believed you could not charge interest simply to hold the money, but you could charge it after a point in time after the money was back. When that concept came across the seas to America, the economic reality of the world was changing rapidly and it was a common practice in almost all of the western world that interest was a legitimate charge for the use of money.

It became recognized as money for sale, and that people were allowed the opportunity to make a profit from the sale of their money as well as a profit on the sale of any other commodity. In Montana, the first usury laws appeared in the late 1800s. It was a very short time thereafter that exceptions began to appear. Again remember, usury does not connote a certain rate of interest. Usury has always been defined as a prohibited amount of interest, prohibited by the laws of the land, and it varies from place to place, and from lender to lender. It is not a foreign concept. It was a concept that was brewed up as a law to protect against unscrupulous people.

Today the type of bill that you have before you involves regulated lenders who are under strict control by the state and federal government. A variety of retail merchants who are under the strict scrutiny of laws - you are not talking about the loan sharks, the money lenders in the temple and other such people - you are talking about a group of business men and regulated lenders. The savings and loan system has recently been allowed by the federal law to compete in the market in a broader perspective thru 'NOW checking accounts' and can now issue commercial paper.

Savings and loans are desirous of participating in the market, but they cannot do so if their money costs them more than they get in return. Until such time as the Legislature and the market place can dictate the price of money, for a variety of loans, you are artificially suppressing markets. They support both HB 238 and HB 239.

JOE DIEHL, Senior Vice President at Federal Savings and Loan, and Director of the Montana Savings and Loan League, support and are in favor of HB 238 - elimination of the usury ceiling for all regulated lenders including savings and loans and building and loan associations. Because of the influx of various additional sources of money and credit through the increasing number of financial intermediaries such as banks, savings and loans, credit unions, mortgage brokers, mortgage bankers, from outside the state as well, an additional supply of money and credit has made this a highly competitive commodity not really requiring usury ceiling restrictions.

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JEFFRY M. KIRKLAND, Director of Governmental Relations, Montana Credit Unions League, supports both HB 238 and HB 244 because they affect the 25 state-chartered credit unions, but if the committee determines that there is industry-wide need for relief from current usury ceilings, then they preferred the relief granted under HB 238. See his explanatory testimony EXHIBIT B.

JOHN CADBY, Executive Vice President of the Montana Bankers Association which represents 165 banks in Montana. They are in support of HB238 and HB 239. See his detailed testimony EXHIBIT C.

GENE GODFREY, Montana Equipment Dealers Association, and also employed by a tractor and equipment company in Billings which has stores in Billings and Sidney, addressed his remarks more to HB 239 as it pertains to the industrial equipment and construction equipment businesses.

In 1975 they strongly supported a revision of the retail installment sales usury limits from 7% to 9% add-on on industrial and construction equipment. This was passed and one of the concerns at that time was the interest rates being charged were too high - that everyone would immediately go to the 9% add-on. It is very interesting that in 1974-1975 is when we met the all-time high of 12% prime and after that the interest rates came down from 1975 to date. It wasn't until 1979 that we ever charged the full 9% add-on on construction equipment. Up until that time it fluctuated in the 7% range. This is a very competitive system, and we have to charge the interest rate that is competitive in the market.

Their competitors are not only within Montana, but the largest competitor is in South Dakota, and the usury rates in Montana put them at a direct disadvantage when competing with a dealer in South Dakota because they have no interest limits. When they go into a price-pool, they have to bid high or they will lose money because of the cost of carrying the contract. They finance quite heavily and it isn't an area that they necessarily would like to be in - prefer to leave that up to the bankers, but because of the nature of their business, the cost of equipment eliminates a lot of the banks in Montana to be able to do the financing they need. Some of their equipment costs as much as \$1 million, and a lot of Montana banks do not have a \$1 million dollar lending limit.

If a bank does have a \$1 million lending limit, the customer is reluctant to borrow because that uses up the contractor's line of credit for operating capital at the bank. Therefore, the customer leans on them quite heavily. Likewise, since the monetary control went into effect in April of 1979, or 1980, they have to borrow their money at whatever the banks are charging, and under the usury laws they have no opportunity to pass that charge on.

They do not feel that the retail installment sale usury limits have any practical application because of the competitive nature of retail sales. He urged the committee to support HB 239.

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CURTIS B. HANSEN, Executive Vice President of the Montana Retail Association, Helena, said they are in a rather unique position in retailing in that they need to be able to borrow money and also have to be able to extend credit to their customers. They have to work hand-in-hand with the lending institutions or they just won't operate. There are a lot of problems created because of the wild fluctuation in interest rates until they have arrived to where they are now. See more complete testimony in his EXHIBIT D. He supports HB 239 if it is not amended.

JOE TAYLOR, President of T & W Chevrolet and the Northern Leasing Co. of Missoula, and a member of the State Banking Board, favors HB 242. See his testimony EXHIBIT E.

Rep. Fabrega said the allotted time for proponents was used up, and he asked the chairman if it would be alright for those who had travelled so far to speak in favor of this bill to stand and identify themselves for the benefit of the committee. Chairman Jensen approved, and many, many people stood and gave their names and business interests and stated support for these bills. Many are listed on the Visitors' Register.

OPPONENTS: None

QUESTIONS -

Rep. Vincent - what is the phase out process on Regulation Q? Is that the one that phases out interest on pass books? He was told it is expected to phase out over a period of six years, and we are in about the second year now. Rep. Vincent - are the charge cards such as Visa and Master Charge covered in this act? Rep. Fabrega - they are covered by the revolving credit act and that is yet another act. HB 239 takes the 18% interest charge off revolving credit, leaving no limit as has been done in some other states.

Can you give us some idea of what you think would happen in the installment credit business if that were eliminated? Mr. Curt Hansen, Montana Retail Association, told the committee what happened in Arizona with the Visa, Mastercharge, Sears, etc., when the ceilings were lifted. First, everyone got a little greedy and the interest rates went up two points. The competition brought it right back down, it dropped a little bit below the levels they were before, and now it is just about at the same level.

Rep. Vincent - sees this as a very sensitive area because just about everyone carries one of those things around. If this is made immediately effective everyone is going to be pointing out what may be a dramatic increase in interest rates. Mr. Hansen said they also found that the credit card companies were easier to get along with. They didn't have so many excuses for a \$20 annual charge or mandating certain things to their customers.

Rep. Fabrega closed saying the reason for having seven bills here is because if one approach is not satisfactory to the committee we have the other options available. There is a limitation as to when you can introduce

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bills and so some of these bills are backups. But there are a couple of areas on transfer fees that are on another bill that we probably need to incorporate into the committee decision. A committee bill may be best.

Ceilings, in his opinion, have worked badly. When the ceiling is too low, and the cost of money on a national level (and that is what we are competing with) goes above those ceilings, the consumer simply has to wait until that pressure comes off before he or she goes out to buy that automobile, etc. On the other hand, the ceiling works against the consumer when the rate goes below the ceiling because there is a tendency for some people to interpret this as what the Legislature told us to charge.

He was surprised to look at records of 1963 when you could finance a house for 5 1/2% to 6%, and commercial borrowing was between 8% and 9%, depending on the amount you were borrowing. Automobiles and the retail field was hanging around at 12.89%. In other words, it provides a price fixing by statute for an industry to use as a bench mark. Without that, nobody knows where the competition is. In his own business, when his volume decreases he has to offer a better price, and that is really what the marketplace is all about.

If, as he hoped would be done, usury ceilings are removed by the passage of HBs 238 and 239, the next session will also enjoy a lesser number of bills because none of these special categories within these acts will have to be addressed. That will go a long way towards aiding the legislative improvement committee. The reason he is carrying all of these bills is because bank presidents, auto dealers, finance companies, insurance people, everyone that is in business, he represents because they are in his House District. That is why he fought so hard not to limit the number of bills he could introduce or these people would have been left out in the cold.

The meeting adjourned at 10:45 a.m.

Josephine Lahti
Josephine Lahti, Secretary

William Ray Jensen
REP. WILLIAM RAY JENSEN, Vice-Chairman

PROPOSED AMENDMENTS TO HOUSE BILL 239

1. Title, line 6

Following: "MCA"

Insert: "; PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1, line 10

Following: ~~{1}~~

Insert: (1)

3. Page 4, line 3

Following: "buyer.""

Strike: " " "

4. Page 4, following line 3

Insert: (2) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for and the seller or holder may charge, collect, and receive a finance charge as specified herein for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed 1 1/2% for each such monthly period to an amount (not including any unpaid finance charge) not in excess of the greatest of:

(a) the average daily balance in the account in the billing cycle period;

(b) the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle; or

(c) the median amount within a \$10 range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range.

(3) If the finance charge so determined pursuant to (4) above for such monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged, received, and collected for such period."

~~5. Page 4, line 19~~

~~Following: "31-1-242"~~

~~Strike: all language through "31-1-242" in line 20.~~

HOUSE BILL NO. 239

1. Title, line 6

FOLLOWING: "MCA"

STRIKE : "."

INSERT : "; AND PROVIDING AN IMMEDIATE EFFECTIVE
DATE."

2. Page 5

FOLLOWING: line 10

INSERT : "Section 3. Effective date. This act
is effective on passage and approval."

STATEMENT FOR PUBLIC HEARING ON

HOUSE BILLS 239 and 240

My name is Jerry Raunig. I'm the Executive Vice-President of the Montana Automobile Dealers Association (MADA), which is the trade association for the franchised new car and truck dealers of this state.

The Problem

Many well-publicized factors have contributed to the ill-health of the automobile business in this state, but the biggest problem since the first of January, 1980, has been the shrinking availability of financing for the AVERAGE car buyer..

As the cost of money increased, following the rising prime rate, banks quickly found that Montana's rate ceilings were below their average cost of money, and car financing in this state became a losing proposition.

The disappearance of financing for the average car buyer immediately became the "ultimate problem" for the dealer because he couldn't get financing for many people who wanted to buy cars.

It is true that banks continued to finance cars for their regular customers, but on a very selective and restrictive basis. Some banks have gotten out of the car financing business altogether (except on a direct basis) while others that have stayed in the business are discounting the contracts they buy from dealers. It is important to remember that dealers must co-sign or guarantee those contracts sold to banks or financial institutions even though discounted.

The captive finance companies - - GMAC and Ford Motor Credit (Chrysler Credit does not have an office in Montana and does only a limited amount of business in the state) have done their best with their dealers during these difficult times, but are losing money on every new vehicle contract they buy in Montana.

We question how long they will continue buying contracts at a loss. In addition, not all dealers have access to a captive finance source - - Chrysler - Plymouth - Dodge - all import dealers - AMC - and Jeep dealers have no access to captive finance sources.

It is clear that shrinking financing is eroding the marketing system on which the entire industry is based - the ability of the consumer to buy a car on the installment plan.

A recent random telephone survey of several dealers around Montana indicates that the turn-down rate on consumer financing has been running between 20 and 40% over the last 9 to 10 months. There is no doubt that the scarcity of financing is still a problem today for the average consumer.

The Cause of the Problem

There is no argument about the cause of the problem, or the fact that it is a Montana legislative problem - not national. In fact, last spring the U.S. Senate was addressing the usury problem with a bill to temporarily override state usury limits but failed to take action because it was strongly felt that usury is a state's right.

Ceiling rates for automobile financing by dealers are set forth in the Retail Installment Act enacted in 1959. This law was designed to regulate car financing and protect the consumer by requiring standard provisions in contracts.

These ceilings, now 22 years old, were established with plenty of leeway, with the knowledge that the legislature could change them as need arose. It is significant to note that the prime rate in 1959 was 5%.

These ceiling rates are stated as add-on rates:

Class 1 - \$7 per \$100 per annum for new car

Class 2 - \$9 per \$100 per annum for used car up to 2 years

Class 3 - \$11 per \$100 per annum for used car over 2 years

The rates are translatable into Annual Percentage Rates (APR) which vary slightly depending upon the period of the loan. Using a period of 36 months, because it ties in with the attached rate sheet, we find that the add-on rates are equivalent to an APR of 12.83%, 16.24%, and 19.57%.

What has happened is that lenders have found that 12.83% is well below their average cost of money, and they're not in business to lose money.

The Numbers

At the start of our fiscal year, January 1, 1980, the MADA had 244 members which represented 96% of the 255 franchised new car and truck dealers in this state.

Since January, 1980, more than 30 dealerships have closed their doors. Only a few of these have been taken on by someone else - most of them are still closed. Many of the 500 former employees of these dealerships have moved elsewhere, and many others are still not working.

Our field representative and the registration records from the Registrar's Bureau in Deer Lodge report that new vehicle sales were off by 21% statewide during 1980.

In checking with our dealer body we find that at least 20 other dealers are in difficult financial straits - - placing another 340 jobs in jeopardy.

Other States Legislative Action

In many other states, the car finance ceilings were as low as ours, or low enough to be inadequate, and when the nation-wide skyrocketing rise in interest rates hit, most other state legislatures took action to help their dealers, their economies, and their consumers.

The attached rate sheet shows ceiling rates in effect in 50 states. This sheet is up to date as of December, 1980.

Our neighboring states have all taken the necessary action. Their rates are set forth below as APR rates, based on 48 month loans:

Idaho	18%
North Dakota	18%
South Dakota	20%
Wyoming	18%

The State of New York was the most recent to take action. Effective December 1, 1980, automobile financing was deregulated in New York in a manner similar to this bill by eliminating add-on rates and allowing the competitive marketplace and the availability of money to determine the interest rate negotiated between the retail seller and the buyer.

The Reason We Need Help

The shrinking availability of financing for the average car buyer has become the SHRUNKEN availability of financing. The high-salaried person has little problem, but the average person with a modest income still finds that nobody really wants his new car finance business.

People on the lower end of the economic ladder, who have been considered marginal risks a year ago, but who still might have been qualified because the dealer guaranteed the contract, are simply out of luck now.

If automobile dealers are ever to regain their rightful share of the market, and if we are to safeguard the more than 3500 jobs provided by our dealers, this legislative action is necessary in order that Montana will once again become a reasonable, profitable market for car financing.

We do not feel that eliminating the rate ceilings would lead to overcharging on interest. On the contrary, we feel that deregulation would make the car financing business competitive once again in Montana, particularly with the Savings & Loans now being authorized to get into the consumer finance area.

We feel that passage of this bill would create a situation whereby banks, the captive sources, Savings & Loans, and credit unions would be placed in a very competitive situation in competing for consumer car financing which would tend to keep interest rates down.

We have also attached a sheet showing the difference in monthly payments at varying APR's beginning with our current 12.83% up to 22% which is the highest the prime rate ever reached during 1980. It is interesting to note that the difference between the lowest and the highest interest rates on a \$5,000 - 3 year loan is approximately \$23 per month.

We respectfully urge the committee to give favorable consideration to this bill, and we thank you for the time you have given us.

INTEREST RATES ALLOWABLE ON NEW VEHICLES

<u>STATE</u>	<u>A P R</u>	<u>SPECIAL CONDITIONS</u>
Alabama	17.6%	Plus \$20. fee - No limit over \$5,000.
Alaska	17.6%	
Arizona	17.6%	
Arkansas	10.0%	Seeking constitutional amendment
California	20.75%	
Colorado	18.0%	
Connecticut	16.0%	
District of Columbia	21.5%	
Delaware	17.6%	
Florida	17.6%	
Georgia	17.6%	
Hawaii	18.0%	
Idaho	18.0%	
Illinois	20.75%	
Indiana	18.0%	
Iowa	20.75%	
Kansas	18.0%	
Kentucky	19.19%	
Louisiana	18.0%	
Maine	18.0%	
Maryland	21.5%	
Massachusetts	20.75%	
Michigan	16.5%	
Minnesota	17.6%	
Mississippi	18.0% - This date	5% over Federal discount rate
Missouri	17.6%	

<u>STATE</u>	<u>A P R</u>	<u>SPECIAL CONDITIONS</u>
Montana	12.68%	
Nebraska	18.0%	
Nevada	20.75%	
New Hampshire	16.0% - This date	3.0% over Federal discount rate
New Jersey	15.99%	
New Mexico	17.2%	
New York		Auto financing deregulated 12-1-80
North Carolina	16.0%	
North Dakota	18.0%	
Ohio	18.0%	
Oklahoma	18.0%	
Oregon	14.35%	
Pennsylvania		Rates vary with Federal discount rate
Rhode Island	21.0%	
South Carolina	18.0%	
South Dakota	20.0%	
Tennessee	No Limit	
Texas	13.51%	
Utah	18.0%	
Vermont	18.0%	
Virginia	24.0%	
Washington	12.0%	
West Virginia	18.0%	
Wisconsin	17.0% - This date	4.0% over Federal discount rate
Wyoming	18.0%	

MONTHLY PAYMENTS FOR A
\$5,000 LOAN FOR 36 MONTHS

<u>A P R</u>	
12.83%	\$167.68
13%	\$168.47
14%	\$170.89
15%	\$173.33
16%	\$175.79
17%	\$178.26
18%	\$180.76
19%	\$183.28
20%	\$185.82
21%	\$188.38
22%	\$190.96



TESTIMONY BEFORE THE HOUSE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF HB #238 and #239

ARCADE BUILDING SUITE 4H
HELENA, MONTANA 59601
PHONE 406/443-4121

FRIDAY
JANUARY 23, 1981

EXECUTIVE VICE-PRESIDENT
JOHN T. CADBY

Good morning Mr. Chairman and members of the Committee:

I am John Cadby, executive vice president of the Montana Bankers Association. Our Association has as dues paying members the large and small, independent and group, state and national, city and rural, or all 165 banks in the State of Montana. In their behalf, we thank you for giving us this opportunity to speak in support of House Bills #238 and #239.

The attached cites the detrimental effects of interest rate ceilings on the consumer, the farmer, the businessman and the economy of Montana. Also, enclosed is a speech given by a professor of economics to the Arizona legislature who repealed all their ceilings last year. In fact, most countries in the world and many states in this nation have removed all interest rate ceilings leaving it up to the borrower and the lender and the purchaser and the seller to negotiate a mutually agreed upon rate of interest in a free and competitive market.

In this era of deregulation and intensified competition, money like any other commodity should be subject to the marketplace and not the law. Congress has recognized this by deregulating financial institutions to stimulate competition, by preempting state usury laws to prevent distortions of credit and eliminating ceilings on savings to stimulate economic growth.

Interest rate ceilings drive money out of the state, restricts credit availability, creates discrimination, penalizes savers, does not protect the consumer and fuels inflation. In short, interest rate ceilings are no good for anyone in Montana and should be abolished once and for all by passing House Bills #238 and #239.

Today we have legal counsel for MBA, Mr. George Bennett and bankers from throughout Montana to respond to questions if any from members of the committee. We also have additional studies and articles on the subject of interest rates by economists and experts throughout the nation in the event the committee would like more information on this subject.

EFFECTS OF INTEREST RATE CEILINGS ON:

Economy and Inflation

Statistics show states without interest rate ceilings have better economies than states with strict usury laws.

Depositors receiving 5% on savings with inflation at 13% are losing 7% on purchasing power plus income taxes must be paid on the 5½% interest received and the result is lower percentage of savings of disposable income, thereby resulting in less investment capital for economic growth, less productivity and higher inflation.

Inflation is a primary cause of high interest rates. When inflation was zero, banks were lending money at 3%. Twenty years ago the inflation rate was 2% and the national prime rate average was less than 5%, even though Montana had a usury ceiling of 10%.

Most foreign countries do not have the interest rate ceilings. England repealed their usury law over 100 years ago.

Six states have no ceilings on regulated lenders. South Dakota removed interest rate ceilings on regulated lenders last year. California removed their ceilings on regulated lenders 50 years ago. New York and Arizona recently removed all interest rate ceilings.

Availability of Capital

Interest rate ceilings drive money out of the state, consequently there is less working capital for farmers and businessmen and less credit for consumers.

Money does not recognize any geographical boundaries and flows to the highest bidder. Public funds as well as individual savings will flow out of state if Montana's financial institutions are prohibited from offering competitive interest rates.

Savers

Interest rate ceilings penalize savers by preventing financial institutions from paying marketplace rates.

Regulation Q is being phased out by Federal Law thereby subjecting the saver to the marketplace.

High interest rates have educated savers to shop for the highest yield.

Borrowers

Restrictive interest rate ceilings increase demand and decrease the supply of funds, so funds are rationed to favored customers.

Interest rate ceilings hurt those persons they are designed to help namely the poor, young and those less credit worthy due to limited amounts of capital.

Credit contracts are not only subject to rates of interest but maturity, down payments, security required and credibility of the purchaser. The lower the interest rate ceilings, the more restrictive other credit terms become.

Consumer Protection

"The best allocation of resources and the best protection to the consumer is a freely competitive market". (Dr. John Buchler)

In a free market, interest rates are self-regulating and self controlling.

To single out the credit market to protect the gullible does not make sense when there are no price controls on any other product or service in the marketplace.

Between government regulators and fierce competition it is inconceivable a regulated lender could gouge its unsophisticated borrowers.

The discipline of the marketplace is the best discipline in controlling inflation and interest rates.

The Federal Truth and Lending Act requires all lenders and retailers to use the Annual Percentage Rate so borrowers and purchasers are able to compare rates advertised by financial institutions and retail stores.

Stability of Financial Institutions

Today, eighty percent of loans are funded by purchased money that is acquired by paying the market rate and not low cost savings and checking accounts as in the past. A profitable bank is the best security for the depositor, even preferable to FDIC Insurance. All banks, savings and loan and credit unions are vulnerable to high inflation and unstable interest rates. Their only hope is the ability to adjust to sudden fluctuations in the marketplace.

Any interest rate ceilings cannot adjust to a volatile interest rate market as has been experienced in the United States for the past six years. Said rates would have to be adjusted every legislative session and still would not keep up with the daily fluctuations in the marketplace. The same is true for any floating interest rate ceiling tied to a governmental indicator as the discount rate is a politically established rate to attempt to control inflation and is not changed necessarily when changes take place in the marketplace.

Exemptions to State Usury Law

The first exception to Montana's archaic 10% usury rate was in 1889 when pawn-brokers were allowed to charge 3% per month or 36% per annum. In 1911 wage brokers were allowed to charge 12% and in 1963 credit unions were allowed to charge 1% per month or 12% per annum. In 1975, the legislature raised the credit union rate to 1 $\frac{1}{4}$ % per month.

In 1959, the Montana legislature carved out another exception creating the Montana Consumer Loan Act, allowing finance companies to charge higher rates of interest which has been subsequently amended to increase the size of the loans and provide higher interest rates. Also in 1959, the legislature enacted the Montana Retail Installment Sales Act, allowing higher rates of interest on all retail installment loans including motor vehicle sales. In 1969, the banks were allowed to charge higher interest rates on installment loans.

Up until 1975, the general usury statute provided a maximum interest rate to 10% per annum, except for the above mentioned exceptions. In 1975 the Montana legislature enacted a floating ceiling which is in conflict with the exceptions above.

Discrimination

Small banks are unfairly penalized by interest rate ceilings as larger banks have a higher percentage of loans not covered by interest rate ceilings.

Banks, credit unions and savings and loans are discriminated against, being subject to ceilings when PCA's, Federal Land Banks and other competitors are not subject to any interest rate laws.

Federally chartered financial institutions such as credit unions are allowed to charge a higher rate of interest than state chartered financial institutions.

Farm equipment and truck manufactures credit companies are allowed by federal law to charge a higher interest rate whereas automobile and appliance dealers in Montana and their credit companies are subject to state law and lower interest rate ceilings.

It is virtually impossible to define a consumer loan, installment loan, a personal loan, agricultural or business loan to determine the legal rate of interest. All such loans would qualify as installment loans under state law, which defines an installment loan as any loan with one or more payments, yet legal ceilings vary from 12½% to 21% under state and federal laws, depending on the type of loan.

The Montana Development Credit Corporation is unable to make venture capital loans to high risk borrowers, due to the restrictive usury law. Typically, Montana's floating usury statute is below the average prime rate.

Highlights of Speech of

Dr. John Buehler, Professor of Economics, University of Arizona

February 26, 1980

It is my understanding I was invited here this evening to comment on the question of usury laws. I would like to make this recommendation . . . that there is no better program you could follow than to remove all ceilings on all interest rates. Interest rate is the price of credit. As other prices rise, the price of credit rises also. There is a misconception in this country that the reason interest rates are going up now is because the federal government is doing something about it. In a sense, this is true, but interest rates are rising because the federal government and the federal reserve system has followed a highly inflationary policy since late 1975. In a very crude sense, one can take about 3% on top of inflation rates to come up with a nominal rate of interest. The reason we are in a very dangerous situation right now is because the nominal rate of interest, that is, the interest rate that you and I see in the marketplace, whether we are savers or whether we are lenders, has actually been below the expected rate of inflation. And should the public ever adjust to the actual rate of inflation, which for the month of January was in an excess of 16% of consumer prices, and if you add another 3% onto that, you are looking at a 19% to 20% long-term rate.

To get on with the main topic, the trouble with regulation is that it interferes with the market. The best allocation of resources and the best protection to the consumer is a freely competitive market. The only justification in any market is when that market is monopolized. In today's world, financial markets are difficult, if not impossible, to monopolize, simply because of the mobility of funds. There is no bank that can monopolize the market in a large urban area because funds can be moved across state lines and national boundaries with telephone calls. So what are the consequences of interest rate ceilings? You set the regulative rate below the true market equilibrium rate. First of all you have a situation where the demand exceeds the supply and shortages must develop. The available quantity that is supplied now has to be rationed. Now some will be excluded from the market. Normally, the test will be on risk. What it comes down to, is there going to be an income test or a wealth test? There are others who are going to be subsidized. In other words, they are going to be paying a lower rate than they would otherwise pay if you allowed the market to work. So if you were a very rich person, then you ought to favor usury limits. Because you will wind up subsidizing the rich at the expense of the poor. In addition to that the available quantity of credit that appears on the market is going to be less than otherwise. So what does this mean? It means that funds are going to be shifted to other alternatives or they are going to leave the region entirely. And I would submit to you that Arizona is a growth state. You want to attract capital from outside. You do not want to be exporting it. The largest bank and the second largest bank in the state look over their shoulders constantly to see what the other banks are going to do. More importantly, they are not just concerned about the banks in Arizona because funds can be moved very easily from one state to another with a telephone call. In other words if a small bank in Arizona is in a position to take a very important loan, and is competing against the largest bank in the state, it is not limited to its own resources. It can move in the market and very quickly.

There is another concept of regulated rates. It is that growth will suffer, employment, income and tax revenue will be lower. In addition to that, it is a direct encouragement to loan sharking. If you want to establish a loan shark market, then set the regulated rate below the equilibrium rate, and you have created a new market for people to enter, with all the unfortunate consequences we have observed when that occurs.

Now you might want to consider what the impact would have been in Arizona if a usury law had been binding in sometime in the past. The obvious question to ask, is what would have been the right rate? Once you move away from a free market rate then somebody has got to decide what the right rate is. Nobody is smart enough to know that, because once you are below the true equilibrium rate you are going to have a misallocation of resources. What has happened in Arizona is that in the last four or five years, because it is a growth state, employment, income, tax revenue and wealth have increased dramatically. In fact the individual property owner has found that housing has been the best hedge against inflation. Inflation is somewhat capricious. It hits very hard at different groups depending upon what assets you own or do not own. The one group that has survived this inflation very well, in fact profited from it, is the residential homeowner. Because the rate of inflation in residential housing has exceeded the rate of inflation in consumer prices. The groups that have been hurt the hardest are the working poor, and surprising enough the rich people who have had bonds in their portfolio. In fact the people who are depending upon their pensions sometime down the road, might look over their shoulder to see what has happened to those pension funds in the last week, as a result of a collapse of the bond market. Now, the question is, how high are interest rates? When do you want to do something about it? Well, interest rates are not high independent of everything else. They are related to the rate of inflation. If the rate of inflation goes up, interest rates are bound to go up. And if they come down, the consumer is actually protected to some extent especially on residential mortgages, because the individual who has taken on a 12% mortgage today, if interest rates should go back to the rates of the 1960's, he will have the option of refinancing, although he will pay some penalties.

The problem we have had in this country for the past four or five years is that the effective rate of interest has been negative. So borrowing money has been a heck of a bargain. If you borrow money at 10%, the inflation rate is 12%, you can't lose. In fact, the guy lending it becomes the sucker, it seems. The people have figured that out as far as housing is concerned. While we have lamented the fact that mortgage rates have risen, the fact of the matter is the inflation rate on housing has far outstripped them. If the price of housing is going up at 2% a month, 24% a year, and you are only borrowing 10% of the money, and you are paying 12%, you could pay 20% and still make a substantial profit. So the interest rate is not going to restrict you from borrowing the money to buy the house, as long as you are faced with that kind of an expected rate of inflation.

Housing starts are down now because the rate is starting to bite on some groups, and there is also some question as to the availability of funds in some parts of the country. Where some states do have usury laws, funds are moving out of that area into higher rates of return. So there is some problems with availability.

We have to look at the root causes of inflation. And I think the root cause of inflation is very clear. It results from an over-expansion in the money supply in the central banks. What will happen if interest rates rise and the federal reserve system at the same time tightens down and does not contribute to a further expansion in the money supply, aggregate demand will slow down. The growth in aggregate demand will be arrested, then as the individual businessman tries to pass the higher interest costs on to

the consumer, the field will be faced with resistance. There is going to be tremendous pressures on the federal reserve system if we start to head into a recession.

Some of what we have observed in the bond market this last week is reminiscent in what happened in the stock market crash of 1929. Things never happen in the same way twice. But if the public believes, not only in this country but in other countries as well, if the United States is not going to deal effectively with the rate of inflation, and if they are going to continue to pump money into the system, nobody is going to want to hold bonds, and nobody is going to want to hold mortgages. And the way you avoid suffering a substantial capital loss is to unload those instruments -- get rid of them before the price goes down and the act of doing this will drive the price down and drive the interest rate further.

To go back again, we have generated an inflation rate in this country that is not sustainable over a long period of time. What has happened is the rates of inflation has outstripped the rising interest rates. If you are a lender, you do not want to lend me a hundred dollars for a year at 10% interest if over the course of that year prices are going up to 15%, because you are a loser. Now what has happened in this country is that the public has not adjusted to the actual rate of inflation. In fact, the public has had a lot more confidence in our system than perhaps they have had any right to have. So you have had a rate of inflation that has far outstripped interest rates. Now if the public comes to the conclusion that the government is not going to deal effectively with the rate of inflation, and they adjust their own behavior accordingly, then only a fool would continue to hold dead instruments. This does not apply just to people in the United States -- it applies to the OPEC countries as well. In other words, you do not want to hold an asset that is going to go down in price. And the best way to beat that game is to sell it before it goes down. So the act of everybody selling those instruments to beat the price decline, which in turn will generate a price decline, and I would submit that this is partly what has happened in the bond market today. Now the federal reserve system has moved to try and tighten up on the money supply. Apparently they made some efforts in October of 1979, but if you have spent four or five years screwing up the system, you are not going to put it back in order in six or nine months. It will probably take an extended period of time, to get the ship back on course. For one thing, you have got to convince people that hold these assets that you do mean business. And if they have watched you misbehave over a long period of time, like going to church for a couple of times in a row, isn't going to convince them that you have seen the light. They are going to require a great deal more gratification of a tightening up policy before they are going to respond. So the problem is that we may have gone too far already. We may not be able to arrest the kind of speculation that is going on.

Now again, looking at it from the states standpoint, there is very little the state can do about it. You are at the mercy of the national economy. Interest rates and money markets are national markets -- not local markets. It can move money around too quickly. If you sell some securities through your broker, the sale of those securities can be transmitted to the New York market within minutes. The worst thing a state can do, however, is to generate regulations which is going to interfere with the free flow of credit that is available.

Why do we have usury laws in the first place? I have always wondered about that myself. No one seems to say we should control the price of Coors beer or General Motors cars, -- we don't seem to worry about that, but we do worry about the price of credit. And the price of credit is just another price itself. Yet we feel compelled to do something different there. Some of it may have religious origins, and Sister Clare may know more about this than I, but it is true that back in the middle ages when usury laws

were instigated, the countries where they were very slow in being removed, their growth and development was arrested. Spain and Portugal lagged very far behind other European countries because of usury laws. What would happen here if this state introduced a usury law is that the capital will leave the area. Again, we are a growing state. We need to be an importer of capital, we really don't want to export it. Again this applies to whether you're talking about the interest rate on residential mortgages or bank credit cards or the interest rate paid to savers.

Unfortunately, what has happened in this country is that the people who can least afford it are the ones who have been discriminated against. If you have a hundred thousand dollars, you have many options. If you have fifty dollars, your options are pretty much narrowed down to passbook savings, and those are regulated. This is not fair and it is not equitable. So there again, you have a case where regulation comes down and it hits very hard on lower income individuals.

There is some misconception that banks generate a tremendous amount of profit. However, if you take a look at the rate of return on bank capital, it is no better, and sometimes a heck of a lot worse than the rate of return on other types of capital. So common sense would dictate that the rate of return on bank capital is not excessive. If you need further confirmation on this, take a look at the cost of capital to the banks right now. At the close of business today the federal funds rate, that is the rate on one day money, was 14 1/8%. The interest rate on ninety day CD's is 15% but the effective costs of the banks is 17.86% because the banks have to keep reserves, that is non income running assets against those reserves. The interest rates on six month T-bill CD's is 13.5% and the effective rate is 13.85%. So the day is pretty much over where the banks can get money from their depositors at zero return or from checking accounts or 5.25% from savings accounts. They have to go out into the market and slug it out like everyone else. The last thing that we would want is to have an unhealthy institutional structure in this country. Because it is one of the institutions that has made this country very productive.

So in conclusion I would strongly recommend that you let the market work. Have confidence in the market and do not impose artificial ceilings because the costs are very, very high and they are also very inequitable.

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28 January 1981

BUSINESS AND INDUSTRY COMMITTEE
OF THE HOUSE OF REPRESENTATIVES:

RE: HOUSE BILL NO. 239

We, the retail community members, need your help in obtaining relief from the interest rate/credit squeeze.

In many cases we find it impossible to sell our products for cash and we therefore have to extend credit to our customers which allows them to finance their purchase. This is not only true in the case of one item large purchases, but is also true in quantity purchases such as new clothes for the children at the beginning of the school year.

The bulk of our capital is invested in furniture, fixtures, stock and, in some cases, real property. Most of us have to borrow money to operate our credit departments.

We find it difficult to borrow money at today's rates and lend that money out at a maximum of 18% and not see our profits disappear.

We find ourselves between a rock and a hard spot in that to make many of our sales we must extend credit and extending that credit reduces our overall operating profit.

We do not want to be in the business of financing purchases, but we have no choice. If we are to be competitive with the large multi-state operations we must and yet, we can not afford to lose money like they do. J. C. Penney and Company alone lost some 54 million dollars on their credit operations during their last fiscal year.

We do not want or request any special favors. We feel that we can compete fairly and squarely as long as there is fair competition in the marketplace.

We do however feel that to remove interest rate ceilings and usury statutes from "regulated lenders", places us at a big disadvantage in the market place and thereby nurtures unfair business practices, unless House Bill No. 239 is looked on favorably, by this committee and receives a do pass recommendation without amendment to place a ceiling on interest rates for

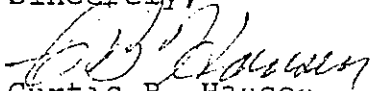
those of us that must operate under the "retail installment sales act".

I know there are some concerns about "Open-End Credit Transactions", which include revolving charges and credit card transactions.

I know it has been said that Open-End Credit of this type is not protected by the Federal Truth in Lending Statutes. However, attached you will find excerpts from the federal statute to demonstrate that such transactions are covered by that federal statute and that a full disclosure is required just as it is in other type transactions.

Please, do not affix any self-defeating interest rate ceiling to House Bill No. 239 and move it out of committee with a "DO PASS" recommendation.

Sincerely,



Curtis B. Hansen
Executive Vice President

FEDERAL TRUTH IN LENDING

Chapter V

Open-End Credit

Open-end credit is consumer credit extended on an account pursuant to a plan under which:

1. the customer is permitted to make purchases or obtain loans directly from the lender or indirectly by the use of a credit card, check, or other device;
2. the customer has the privilege of paying the balance in full or in installments; and
3. a finance charge may be computed from time to time on the outstanding balance.

Under an open-end credit plan, it is contemplated that there will be repetitive transactions on a revolving basis.

The disclosures required for open-end credit differ substantially from those required for closed-end credit. This chapter will detail the various types of disclosures required and the procedures that must be followed. The rules for this section should be carefully scrutinized because they are among the most complex sections of Regulation Z.

A. Opening of Account

All new account disclosures must be given before the first transaction is made on the account. The required disclosure must be in writing and show the A.P.R. (Annual Percentage Rate) and the dollar amount of interest on the first transaction.

B. Periodic Statements

Each periodic statement must show the previous billing period's balance, payments/credits, new purchases/charges, the finance charge, the balance on which the finance charge was computed, the A.P.R. (Annual Percentage Rate), the closing date of the billing period, new balance, periodic rate, corresponding annual percentage rate, the balance on which the finance charge was computed, and a place "send inquiries to", and advice of their rights to dispute any charge.

Open-End Credit

Introduction

Section 6.1

The disclosure program for open-end credit accounts differs substantially from that for closed-end credit. Typical open-end credit plans are bank credit card arrangements and overdraft checking accounts:

Open-end credit involves two types of disclosures: (1) those to be made before the first transaction on the account, and (2) those to be made with each periodic billing statement, generally monthly, for transactions taking place during the period.

It is important that examiners closely review a bank's open-end credit plan to determine compliance. A bank's exposure to liability for violations is greatly increased under an open-end credit plan, since a violation in the disclosure format or in the Annual Percentage Rate may adversely affect many individual cardholders simultaneously and result in a class action law suit.

As stated in the Introduction to "Truth in Lending," the term open-end credit describes a plan which usually permits frequent extensions of credit, generally in small amounts, up to an agreed limit. The consumer has the option of paying the balance in full or in instalments. The fact that a finance charge may be imposed on the outstanding balance should not be considered in determining if a particular credit card plan is open-end credit. The term does *not* include *negotiated* advances under a future advances provision of a real estate mortgage or a letter of credit.

Issuance of Credit Cards

Banks cannot issue unsolicited credit cards. A credit card may be issued only if:

- It is requested or applied for (telephone solicitations are permissible); or
- It is a renewal of, or in substitution for, an accepted credit card.

Conditions of Liability of Consumer

A consumer can be held liable for unauthorized use of a credit card only if:

- The credit card is an accepted one, i.e., requested and actually received by cardholder.
- The bank has notified the consumer of the potential liability for unauthorized use of the credit card. The notice may be printed on the credit card, or transmitted in a manner that reasonably assures its receipt by the cardholder. If the notice is not on the credit card, it must have been given within 2 years preceding the unauthorized use.
- The bank has provided the consumer with an addressed notification which requires no postage to

be paid by the consumer and may be mailed in the event of loss; theft or possible unauthorized use of the credit card.

The bank cannot hold the consumer liable, if the liability conditions have not been complied with. When those conditions have been met, the consumer's liability for unauthorized use is limited to the cost of goods and services purchased before notice, or \$50, whichever is less.

If the bank tries to enforce liability for the unauthorized use of a credit card, the burden of proof is upon the bank to show that the conditions have been met or that the use was authorized.

A bank issuing 10 or more credit cards to employees of a company, for business use, may negotiate with that firm the terms regarding its liability for unauthorized use. However, neither the bank nor the business may impose liability on the individual cardholder unless the liability conditions have been met, and, in any case, the liability of the employee cannot exceed \$50.

Specific Disclosures

Before the first transaction is made on an open-end account, the bank must give the consumer a single written statement, which he or she may retain, containing:

- The conditions under which a finance charge may be imposed, including an explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge. However, the bank may elect not to impose a finance charge even if the payment is received after the allotted time period. That option need not be disclosed.
- The method of determining the balance on which the finance charge is computed.
- The method of determining the finance charge. This description must include the method of determining any minimum, fixed, check service, transaction or other charge.
- The periodic rate. If more than one periodic rate is applied, each rate must be stated with the balances or range of balances to which it applies. The corresponding Annual Percentage Rate(s) must also be stated and determined by multiplying the periodic rate by the number of periods in the year.
- The conditions under which any other charge may be imposed and the method of determining such a charge (late charge, etc.).
- The conditions under which the bank may acquire a security interest in any property to secure the payment of credit extended on the account, and a description or

identification of the type of security interest which may be obtained. If the consumer also has an open-end mortgage on his or her residence, the bank should, upon opening the account, waive its security interest in the real estate for any advances made with the credit card. Use of the credit card would place a lien on the real estate each time a purchase, advance or overdraft was made. In those cases, the customer is entitled to rescind the transactions, and funds or goods cannot be disbursed for 3 days. Unless the security interest is waived when the account is opened, the consumer would have to be given the right of rescission each time the card is used. Exceptions to this requirement, however, are provided in 226.9(g)(6).

- The minimum periodic payment required.
- A statement outlining the consumer's rights to dispute billing errors. The statement should contain substantially the same text as provided in 226.7(a)(9). If the statement does not appear on the face together with the other required disclosures, then one of the following notices must be there:

NOTICE: See accompanying statement for important information regarding your rights to dispute billing errors.

NOTICE: See reverse side for important information regarding your rights to dispute billing errors.

The bank may also elect to include in its initial disclosure statement, the Comparative Index of Credit Cost. However, that optional disclosure is rarely, if ever, used. In the event that the Index is disclosed, section 226.11 of Regulation Z should be reviewed for required disclosures.

Periodic Statements

Disclosures

Each consumer, except those with accounts 226.7(b) which are uncollectible or for which collection procedures have been instituted, must receive a statement at the end of each billing cycle, unless the undisputed outstanding debit or credit balance is \$1.00 or less. However, if a finance charge is imposed, a statement must be issued regardless of the balance. If applicable, the following disclosures must be made on that portion of the periodic billing statement that the consumer may retain. *Terms shown in quotations are required terminology. Terms marked with an asterisk must appear on the face of the statement.*

*1. "Previous balance"—This is the amount outstanding at the beginning of the billing cycle. If the previous balance is a credit, it must be indicated as such.

*2. "Payments"—This is the total amount paid by the consumer to the bank during the billing cycle.

*3. "Credits"—Amounts credited to the consumer's account during the billing cycle, such as returns, rebates of finance charges and adjustments. Those credits must be distinguished from payments.

*4. "Finance charge"—(Must be more conspicuous). L 517
This is the amount of the finance L 582
charge added to the consumer's account during the billing cycle. Each component of the finance charge must be itemized and identified. For example, the finance charge resulting from the application of the periodic rate and a cash advance transaction charge would be separately itemized.

*5. The balance on which the finance charge was computed.

*6. "Annual Percentage Rate"—(Must be L 517
more conspicuous).

*7. The closing date of the billing cycle. In 226.7(b)
addition, if the bank provides a free-ride period, the date by which, or the period within which payment must be made to avoid additional finance charges, must be disclosed.

*8. "New balance"—This is the outstanding L 538
balance on the closing date of the billing cycle. If the new balance is a credit balance, it must be indicated as such. If the bank discloses a minimum payment due, it must not make that amount more conspicuous than the new balance. A more conspicuous minimum balance could be misleading since the consumer might unknowingly pay that amount rather than the new balance.

9. "Periodic rate"—(or "rates"). This is the rate that may be used to compute the finance charge. Each rate used must be disclosed.

10. "Corresponding annual percentage rate"—This is the rate resulting from multiplying the periodic rate by the number of payment periods in the year. The terms "corresponding annual percentage rate," "corresponding nominal annual percentage rate," or "Annual Percentage Rate" are acceptable. The corresponding annual percentage rate is not required to be as conspicuous as the "Annual Percentage Rate" or more conspicuous than other terminology.

11. Explanation of determination of the balance on which the finance charge is computed. The bank is required to explain how it determines the balance on which the finance charge is computed. For example, if the bank uses the average daily balance method, it must explain how the average daily balance is computed.

12. "Send inquiries to"—(Must appear either L 1026
on the face or reverse side of the statement L 1042
and not on separate sheet.) The bank must state an address, preceded by the words "Send Inquiries To" or similar language, to which the consumer should

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send correspondence about his or her bill. A telephone number as or less conspicuous than the address may also be provided. However, the consumer cannot preserve his or her rights under the Fair Credit Billing Act, if an inquiry is made by telephone.

Description of Transactions

The consumer must be given a description of 226.7(k) the item charged. The requirement for descriptions, generally referred to as *primarily required information*, may be fulfilled:

- If a copy of the actual document evidencing the credit transaction is included. The enclosed copy (country club billing) or accompanying statement must reflect the amount of the transaction and either the date of the transaction or the date the charge is debited to the consumer's account.
- If in a purchase transaction a copy is not enclosed (descriptive billing), the periodic statement must reflect the amount of the transaction, the date on which the transaction took place and the seller's name and address (city and state or foreign country) where the transaction took place. If the consumer has purchased an item from the bank, or the seller is connected with the bank, the statement must instead give a brief identification of the item purchased as well as the amount of the transaction and the date on which the transaction occurred.
- If the credit transaction is non-sale credit, such as a cash advance or check-credit overdraft, a copy of the document evidencing the transaction and showing the dollar amount and date of transaction or date the transaction was debited to the consumer's account, or the date of the instrument may be included. If a copy of the document is not included, the statement must identify the transaction, cash advance, overdraft, etc., and include the amount and date of the transaction, or the date of the instrument evidencing the transaction.

Banks must maintain procedures reasonably adapted to obtain the primarily required transaction identification information described above. If despite such procedures that information is unavailable for a particular transaction, the bank must:

- Provide the date of debiting (posting date), if the date of the transaction is unavailable. The debiting date need not be provided if an actual copy of the document evidencing the transaction is furnished.
- Disclose as much of the primarily required information as is available and omit any portion that cannot be obtained.

- Treat a properly written billing inquiry relating to the absence of primarily required information as a billing error under section 226.2(j) and 226.14, and as an erroneous billing under 226.14(b). The bank must also furnish the consumer, free of charge, with documentary evidence concerning the transaction, even if not requested, unless it was previously furnished with a periodic statement.

Location of Disclosures

If any of the above disclosures which are not required to be shown on the face of the periodic statement appear either on the reverse side or on an accompanying statement, one of the 226.7(c)(4) following notices must be placed on the face of the statement:

NOTICE: See reverse side for important information. L 477

NOTICE: See accompanying statement(s) for important information.

NOTICE: See reverse side and accompanying statement(s) for important information.

The regulation states that the required disclosures shall not be separated so as to confuse or mislead the consumer or to obscure or detract from the information required to be disclosed. *Required disclosures must appear on that portion of the statement that the consumer may retain.*

If the bank provides a "free-ride" period, or a time period within which a consumer may pay any portion of the new balance without incurring an additional finance charge or other charges, the periodic statement must be mailed or delivered at least 14 days before the period ends. If the statement is not mailed at least 14 days prior to that date, then no finance charge, late charge, etc., may be imposed. The 14- 226.7(b)(2) day limit does not apply if the bank has been hindered because of an act of God, war, civil disorder, natural disaster or strike.

Determining the Balance and Computing the Finance Charge

There are many different ways to compute the Annual Percentage Rate, but first the examiner must know how to compute the balance on which the finance charge is determined. The balance is generally computed in three basic ways: the previous balance method, the daily balance method, and the average daily balance method.

In the *previous balance method*, the balance on which the finance charge is computed is based on the balance outstanding at the start of the billing cycle. The periodic rate is multiplied by this balance to find the finance charge. In the *daily balance method*, a daily periodic rate

is applied to either the balance on each day in the billing cycle or the sum of the balances of each day in the cycle. If a daily periodic rate is multiplied by the balance on each day in the billing cycle, the finance charge is the sum of the products. If the daily periodic rate is multiplied by the sums of all the daily balances, the result is the finance charge. The *average daily balance* is the sum of the daily balances divided by the number of days in the billing cycle. The periodic rate is then multiplied by the average balance to determine the finance charge. However, if the periodic rate is a daily one, the product of the rate times the average balance is multiplied by the number of days in the cycle.

Notwithstanding the above, banks have several ways of calculating the balance on which the finance charge is computed. The examiner should be able, by reading the bank's explanation, to calculate the balance on which the finance charge is computed. Any inability to understand that explanation should be discussed with management, reminding them of Regulation Z's requirement that disclosures be clear and meaningful.

The regulation describes the manner of disclosure for the method of computing the balance on which the finance charge is calculated. There are two general requirements: (1) *The explanation must be clear, conspicuous, and in meaningful sequence;* and (2) *The fact that the bank imposes a finance charge without first deducting payments and credits made during the billing cycle must be disclosed.*

If the bank uses the *daily balance method* and applies a daily periodic rate, disclosure may be stated as:

- A balance for each day in the billing cycle. The daily periodic rate is multiplied by the balance on each day and the sum of the products is the finance charge; 1226.703
- A balance for each day in the billing cycle on which the balance in the account changes. The finance charge is figured the same as above, but the statement shows the balance only for those days on which the balance changed; or
- The sum of the daily balances during the billing cycle. The balance on which the finance charge is computed is the sum of all the daily balances in the billing cycle. The daily periodic rate is multiplied by that balance to determine the finance charge.

If the average daily balances are stated, however, the bank must include somewhere in the statement wording to the effect that the finance charge is or may be determined by multiplying each of the average daily balances by the number of days in the billing cycle, then multiplying each of the products by the applicable daily periodic rates, and adding those products.

In explaining the method used to find the balance on which the finance charge is computed, it is not necessary to show the method the bank uses to allocate payments or credits. That information may be disclosed as additional information, but it must not mislead or confuse the consumer or contradict, obscure or detract attention from required information.

Two or More Periodic Rates

Some banks may employ more than one periodic rate in computing the finance charge. For example, one rate may apply to balances up to a certain amount and another rate, to balances over that amount. If two or more periodic rates apply, the bank must 1226.701 disclose all rates and the conditions under which each applies. Also, the range of balances to which each rate applies must be disclosed. It is not necessary, however, to break the finance charge into separate components based on the different rates.

If two or more daily periodic rates are imposed, the sum of the daily balances may not be used. Disclosure of the balances as either a daily balance or as two or more average daily balances is acceptable.

Annual Percentage Rate

Computation of the Annual Percentage Rate depends on three basic factors:

- The method used to calculate the balance on which finance charge is computed.
- Whether one, two or more periodic rates apply.
- Whether minimum finance charges or separate transaction charges are imposed.

(Note: Some banks impose minimum finance charges. Those charges may be ignored in figuring the Annual Percentage Rate, if the minimum charge plus all other charges imposed during the billing cycle do not exceed 50 cents. In such instances, the Annual Percentage Rate is found by multiplying the periodic rate by the number of billing cycles in the year. 226.5(a)(3) If the minimum charge plus all other charges exceed 50 cents, the quotient method (explained below) must be used to disclose the Annual Percentage Rate. Usually, separate transaction charges are assessed for certain transactions, such as cash advances. Methods for 226.5(a) computing the Annual Percentage Rate (Footnote) depend on whether the previous balance or average daily balance method is used to calculate the balance on which the finance charge is computed. Regulation Z provides illustrations of Annual Percentage Rate computations when a separate transaction charge is imposed.)

Open-End Credit Examination Objectives

Section 6.2

1. To verify the accuracy of the balance upon which the finance charge is computed, the Annual Percentage Rate and the periodic rate, and that they are properly disclosed and located. (A minimum of two consecutive statements are required.)
2. To determine the adequacy of policies, practices and procedures regarding open-end credit.
3. To determine if bank officers and employees are operating in conformance with established guidelines.

Mr. Chairman and members of this committee:

My name is Joe Taylor.

I am President of T & W Chevrolet and Northern Leasing Co. of Missoula, and I am also a member of the State Banking Board.

It is my purpose to point out the inadequacy of the current interest usury limits that are now imposed on this state's auto dealers and financial institutions, which in turn restricts the availability of credit to the consumer.

The present ceilings are totally unrealistic in view of today's interest rates. Financial institutions and dealers cannot long carry this burden without restricting desired credit to the consumer.

A middle of the road approach must be made to solve this problem which means a substantial increase in the 12.68 and 12.83 rates that are now the new car ceilings. However I might point out that too high an increase would substantially reduce new car sales as it has in the case of leasing companies where the extremely high and uncontrolled interest rate has resulted in loss of sales and the closure of most of the state's leasing operations, our town alone has lost 93 Leasing, Mission Leasing, and Circle L Leasing. The results of which have denied the Montana consumer his choice of leasing or purchase of a vehicle. Our franchise as well as many others could experience the fate of the leasing companies.

I personally am not in favor of a floating rate as it would further accentuate the feast or famine that our industry is so prone to.

It is my feelings that consumer credit interest rates have to provide a reasonable return to the financial institutions, but at the same time must be stable in order to avoid further sales peaks and valleys that plague our industry.

Our leasing experience has shown that when the interest rates reach 18%, simple interest sales are severely curtailed, thus compounding our financial position.

I am merely stating the need for substantial relief, but not to the extent of severely restricting the new car dealer's sales.

A ceiling limit of 10% on new and late models with 12% on older units in place of the current 7%, 9%, and 11% would be more acceptable than a floating rate structure, the percentages mentioned are on an add on basis.

Mr. Chairman and members of this committee, I thank you for your attention. I will be happy to answer any questions you may have on franchising or lease operators.

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J. C. Penney and Company, In fiscal year 1979, which ended on January 26, 1980, J. C. Penney Company lost \$57,000,000 (57 million dollars) on its revolving charge system.

This is the amount by which the Penney Company reported that the cost of its credit operations exceeded its finance charge income.

The Penney figures are typical of large retail operations.

This includes Wards, Sears, Woolworth, K mart, etc., as well as many of our local much smaller operations.

The smaller local operations, even though we are not talking about losses of millions of dollars, are even more hard pressed. They can not borrow at as low a rate as the much larger operations and their losses from their credit operations cannot be off-set as easily by the volume of sales and profits therefrom.

No one can borrow at 21% or more and lend this money out at 18% and break even, let alone make money.

It results in having to create a larger margin of profit on the cash sales to off-set the losses incurred on the credit sales. This requires the cash customer to pay more to subsidize the purchases made by the credit customer.

Sears was forced to close its store in Butte in 1980 and go back to just a catalogue store operation, due, at least in part, to the losses caused by credit operations.

Many businesses are in that same danger right now.

I would hate to see us wait until they are pushed back into a corner like Chrysler has been before any corrective actions are taken.

If current trends are allowed to continue without any relief, many of the retail operations are going to stop allowing credit purchases and the customer will have to finance through finance companies, (regulated lenders).

Credit purchasing is a big part of the American way of life. Without the ability to purchase on credit it would be even more difficult for young couples to get started.

How can we justify limiting what retailers can charge as interest rates when we eliminate interest rate ceilings for those regulated lenders?

...in fact, establishing the prevailing rate. To say that it is lawful to charge up to _____% will result in the charging of that rate whether the rate set was intended to be a maximum or not.

The elimination of ceilings allows the market place, competition, the American Free Enterprise System, etc. to work, and it will work to the benefit of all concerned. This is tried, tested, and proven, time and time again.

I am concerned with the responsibility that this committee is taking upon itself. . . We (the Bankers, Auto dealers, implement dealers, mobile home dealers, regulated lenders, etc.) all got together and with all concerned in unanimous concurrence, decided that the introduction and support of House Bills 238 and 239 would be in the best interests of all of the citizens of the State of Montana. Many of the entities involved were and are vigorous competitors, BUT WE CAN AND DO RECOGNIZE EACH OTHERS PROBLEMS, and this was taken into consideration in our decision to pursue our original position to support both House Bills 238 and 239.

To eliminate usury/ceilings for some entities and not for the other entities facing the same problems would be creating unfair competition in the market place and be discrimination of the worst possible type in the economic area.

I do not believe there will be many abuses. I admit there may be some, but no more caused by House Bill 239 than by any others under consideration.

If this committee is concerned that the Federal Truth in Lending requirements may not apply, H.B. 239 could be amended to require such disclosure or even a special note and/or disclosure any time the rate charged is in excess of _____%.

If there is a concern with regard to Credit Card companies abuse of removed ceilings, House Bill 239 could be amended to apply to only credit grantors wherein the same entity that sells the product suffers the consequences of the financing and finances the product sold itself.

This is discriminatory too, but at least it doesn't discriminate against the retailer.

Due to the fact that the bulk of purchases of priced-reduced sale items are made on credit, major chain companies have been having special price discount sales more frequently in areas, or states, where they aren't limited to the extent that they lose money on credit sales. Thus, once again, such interest rate limitations are depriving Montana citizens of full advantage of the free competitive market place.

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Rep. Burnett closed saying he would assume that the procedures they are planning to do would be a transfer from the cost of the tracks and would be from the Racing Commission. We are the only industry that does not have a tax on it. Perhaps this bill should have gone to the taxation committee.

EXECUTIVE SESSION -

Rep. Manning moved HOUSE BILL 235 DO NOT PASS. He agrees that horse breeders in Montana need some help, the money isn't there. He would ask the betting public if they want to upgrade horses.

Rep. Jensen made a substitute motion that HOUSE BILL 235 DO PASS. After the following discussion, this motion failed. People from the tracks are the opposition - the horse racing people who were to benefit when horse racing board was established. This bill will promote and benefit the Montana breeders and they do have problems here. They started the program and this is an incentive to the program.

Rep. Andreason spoke against the substitute motion. Something like that would be helpful for the breeders. There are problems with the way this bill is set up. We are going to be legislating portions of what would normally be a private contract between individuals. That contract would have to be renegotiated.

Rep. Harper - How would the bonus money be split between the Montana horses? Rep. Manning - Guaranteed purse plus added money for, say a blanket.

Rep. Manning's motion of HOUSE BILL 235 DO NOT PASS carried by a vote of 13-2 with 4 members absent.

Rep. Manning moved HOUSE BILL 281 DO NOT PASS and this motion carried unanimously.

Rep. Kitselman - Montana Board of Racing needed additional security money. Rep. Fabrega - the general fund was not tapped. Even though there is a guaranteed source of income, the Legislature has to appropriate the money according to a budget. Rep. Vincent - That \$22,000 would allow for a \$23,000 federal match for education. However, he doesn't think it should be taken from this source. Rep. Schultz - Tightening up testing with the use of a vet.

REP. JENSEN WAS APPOINTED ACTING CHAIRMAN.

Rep. Fabrega moved HOUSE BILL 238 DO PASS, and this motion carried unanimously.

Only regulated lenders would qualify under this bill, or under a consumer loan act. Anyone coming into Montana and lending money would be subject. Banks make basically commercial and ag loans.

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Rep. Fabrega moved HOUSE BILL 239 DO PASS. He then moved an amendment providing an immediate effective date, and this latter motion was unanimously adopted.

Under the Federal Trade Act, the APR has to be shown and stated and it has to be signed by the purchaser, besides showing you the rate and what the interest will amount to so that you are aware of what you are going to have to pay. If the seller does not comply, the seller cannot collect either the principal or the interest. It is a contractual area.

Rep. Metcalf - Were you going to put an amendment in here on revolving charge accounts? Rep. Fabrega - No, another bill is coming.

Rep. Vincent - Will this bill take that limitation off? Rep. Fabrega - No limit, but they still have to show the maximum that they can charge you. Every year when they send you the renewal it states the maximum so they cannot change it on you without showing you the maximum amount.

Rep. Jacobsen - Suppose a retailer sells a deepfreeze and wants to write his own paper, is this affected? If a customer doesn't pay his account written at 12-12 1/2%, he has to take it over and has to pay the White firm's credit. It puts a ceiling on the amount of financing that a dealer can afford. There is the question of price fixing interstate.

Rep. Schultz - By changing the source of a credit card he could eliminate \$1 per month charge. How could some do that and some not? Rep. Wallin - Our firm accepts credit cards. Money collected by a firm who accepts credit cards varies 2-5% on cashing it. Competition plays a role in plastic cards.

Rep. Vincent - We are talking about people from all segments of the population using it. He is concerned about this type of credit.

Rep. Fabrega - There are two concepts here: contracts, and revolving charge accounts. Paul Verdon, researcher was to prepare an amendment reinserting revolving accounts into HB 239.

The motion by Rep. Fabrega that HB 239 do pass was withdrawn pending acceptance of an amendment.

Meeting adjourned at 11:15 a.m.

Josephine Lahti.
Josephine Lahti, Secretary

Rep. W. Jay Fabrega by
REP. W. JAY FABREGA, CHAIRMAN J. Lahti.

would actually decrease the expenses of the store. They do not reach 10% in the larger stores. It varies with how long the lease has been established, etc.

Rep. Schultz - Is there a day in the future that the 10% would not cover the cost? Rep. Moore - That may well be.

Rep. Jacobsen - Who makes the final decision on who gets the agency store? Mr. Messerly - My staff and myself will pick the most suitable operator and present this to the department of revenue director. If she doesn't approve, we will have to negotiate and present the contract to the director and then she comes into the picture.

Rep. Robbins - There are two new stores in Helena. If your retail store got too busy, would you open agency stores in other parts of the town that you think would need them? Mr. Messerly - He thinks Helena needs another state store rather than going with agency store concept. Rep. Robbins - Why haven't you done that? Mr. Messerly - The director would not give the go ahead.

Rep. Manning - Under this bill, what protection would the employees have? Mr. Messerly - They could transfer to another state store if there was an opening. But there probably won't be an opening because there is a freeze.

Rep. Moore closed offering to prepare an amendment providing for a bonding requirement for those agency stores because there could be several thousand dollars worth of liquor in some of those stores and he wants to protect that inventory.

Rep. Moore - explained HB 483 allowed a blanket guarantee of \$13 million would be provided to the general fund, but at the end of fiscal 1980 they had only deposited \$5 million, and the project would come up short. They were trying to let the department operate as a business. They also lost some spirit revenues because the consumption went down. He commended Mr. Messerly on his conduct of the stores, and wouldn't completely fault the division. He thinks the wine has cost the state some revenue.

EXECUTIVE SESSION -

Rep. Fabrega moved HOUSE BILL 285 DO PASS, and it was unanimously adopted.

Rep. Fabrega moved HOUSE BILL 239 DO PASS. He further moved an amendment providing an immediate effective date, and this motion was unanimously adopted. Rep. Wallin moved to amend the amendment to state the rate to be 21% as it would be unfair to ask them to carry the loss. This could be done by changing the 1 1/2% to 1 3/4% for each monthly period. This motion was defeated with Reps. Ellerd and Wallin voting Yes. Rep. Fabrega further moved Items # 1, 2, 3, 4 on the proposed amendment EXHIBIT B be adopted. Motion carried unanimously. Rep. Fabrega then reworded his

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first motion to HOUSE BILL 239 DO PASS AS AMENDED. Motion carried unanimously.

Rep. Jacobsen moved that "heavy equipment" be placed in House Bill 130. Rep. Schultz moved to postpone action on this bill, and this latter motion carried unanimously.

The meeting adjourned at 11:30 a.m.

Josephine Lahti
Josephine Lahti, Secretary

Rep. William Ray Jensen by
REP. WILLIAM RAY JENSEN, Vice Chairman
J. Lahti

FORTY-SEVENTH _____ LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
14	1/19	3/4	3/6				3/6		
21	1/16	2/9	2/9				2/9		
30	1/21	3/6	3/6				3/6		
67	2/13	3/11	3/11				3/11		
104	1/21	3/6	3/6					3/6	
106	3/2	3/16	3/16				3/16		
130	2/20	3/9	TABLED						
132	2/20	3/9	3/21 TABLED	MOVED TO LOCAL	GOVERNMENT	3/23			
141	1/26	3/6	3/6				3/6		
183	2/5	2/18	2/19				2/19		
238	2/7	3/4	3/7	BACK TO COMMITTEE	3/11			3/7 3/14	
239	2/7	3/4	3/7	BACK TO COMMITTEE	3/11			3/7 3/14	
257	2/4	3/17	3/18				3/18		
285	2/7	3/13	3/13				3/13		
286	2/10	3/4	3/7					3/7	
309	1/29	3/6	3/6				3/6		



QUESTIONS ON HOUSE BILL #14:

SENATOR GOODOVER: Do I understand correctly that this would apply only to sparsely populated communities, only rural areas.

JEFF KIRKLAND: The department would determine this.

REPRESENTATIVE MANUEL: This bill pretty much follows the federal guidelines. Any community over 25,000 could not do this, under the Department of Business Regulation.

JEFF KIRKLAND: They will attempt to establish boundaries.

REPRESENTATIVE MANUEL: I feel that the need is there for the rural sections to have the right to have a community credit union.

The hearing closed on House Bill 14.

HOUSE BILL 238 and HOUSE BILL 239: Representative Fabrega of House District 44 presented the bills. He asked that they be considered together since they are companion bills. The chairman granted this request. House Bill 238 exempts regulated lenders (banks, savings and loans, credit unions, trust companies, credit associations, the credit development corporation, and bank holding companies) from limitations on the amount of interest they may charge, and from the operation and effect of all usury statutes.

House Bill 239 eliminates usury limits under the retail installment sales act. Provisions governing revolving credit under retail charge account agreements are still contained in the bill. The finance charge on retail installment contracts would be at a rate agreed on by the buyer and seller.

Mr. Fabrega went on to explain the definition of regulated lenders. The bill retains the present language. He explained the retail sales act. The federal truth in lending act raises percentage rates. It has to be indicated how much in dollars and cents the borrower has to pay.

PROPONENTS:

JERRY RAUNIG: I'm the Executive Vice-President of the Montana Automobile Dealers Association, which is the trade association for the franchised new car and truck dealers of this state. We are in support of this concept. It is clear the shrinking market and financing is eroding the marketing system on which the entire industry is based, the ability of the consumer to buy a car on the installment plan. He discussed the ceiling rates which are add-on rates. He quoted interest rates allowed on new vehicles. Charts and testimony were presented to the committee. Exhibit "B".

REPRESENTATIVE NORM WALLIN: I am a Ford dealer and have been for

thirty-four years. I am in favor of these bills. I have never experienced the difficulty in that time that we are having right now. We have to be able to sell the paper to local banks. The dealers are having some success in some areas, but in some areas the banks discount the contract 5%. I would surely urge your support of these bills.

JEFF KIRKLAND: I am Director of the Governmental and Community Relations for the Montana Credit Unions League. Our league is a trade association representing 133 of 136 credit unions in Montana. 108 of those are federally-chartered and 25 are state-chartered. The flexibility is needed to adjust rates to changing market conditions. 110 of 136 credit unions have a ceiling. The lenders need the flexibility. He quoted from charts and percentage rates which he presented to the committee. The prime rate is only one of many indicators of the market. There is no need to have artificial usury ceilings. We support the removal of the usury ceiling. He presented testimony to the committee. Exhibit C.

JOHN CADBY: I am the executive vice-president of the Montana Bankers Association. Our members are all 165 banks in the State of Montana. The testimony which I will pass out cites the detrimental effects of interest rate ceilings on the consumer, the farmer, the businessman and the economy of Montana. Also, enclosed is a speech given by a professor of economics to the Arizona legislature who repealed all their ceilings last year. I have tried to capsulize my file drawers for the past twenty years, to determine what effect it would have. He discussed the discriminatory effects of usury ceilings. California has not had a ceiling for the last fifty years. House Bill 14 is an example of the common bond and the rate of interest should be negotiated. Interest rate ceilings drive money out of state, creates discrimination, fuels and inflames inflation. Exhibit D.

GEORGE T. BENNETT: I am an attorney representing the Montana Bankers Association. Banks do not want to give loans at 12.3 when people can invest in CD's at 14 or 13 or 15 percent. Volume won't help on this kind of a deal. He went on to expand on the problems banks are having at the present time.

LARRY HUSS: I am representing the Montana Savings & Loans. I want you to recall that usury was adopted in a day when there was less regulation of business. But today we are talking about very regulated markets. You now have enough control that this is no longer needed. The savings and loans can now make some of their money available for consumer loan transactions. We have found in the past that artificial ceilings become the rate, and the continued usury will cause a market shift. I support the bills.

Representative Fabrega asked the people in support of the bill to stand and state their name and who they represented. The individuals thus introduced signed the witness register which is attached.

CURTIS B. HANSEN: I am the executive vice-president of the Montana Retailers Association. I support House Bill 239, with some reservations. As originally drafted, introduced and intended, it included retailers. It was amended in the house committee and by the amendment, retailers were eliminated. I want to explain why retailers should not be eliminated, as well as to explain how we have eliminated the concerns we had previously. He went on to explain and presented written testimony of his concerns to the committee. He discussed how interest works and also the abuses of credit cards and how it could be stopped. I would request that you give it your consideration and we do support it with the amendment to include retailers. He presented written testimony to the committee. Exhibit E.

GREG ALLEN: I am the owner of a mens wear store in Helena which was started by my father who still runs a women's wear store here in Helena, also. Both of the stores have their own revolving credit account plans for our customers. I do feel there is a need to restrict this bill by amendment. We don't own our charge accounts. We sell them and we have to pay the difference on the interest rate. He presented a copy of testimony to the committee. Exhibit F.

COPIES OF WRITTEN TESTIMONY WERE PRESENTED BY THE FOLLOWING:

MIKE DeMARCO: Comptroller for Kayfman's Menswear of Montana
BRUCE SIMON: Owner of Cole's Department Store in Billings
LOIS TOPLARSKI: Owner of Lenz Card and Gift Shop in Butte
JACK WHIPPLE: Manager of Chambers-Fisher Department Store in Bozeman
LUCILLE BRAY: Credit Manager for the Hart-Albin Stores of Montana

NO OPPONENTS:

QUESTIONS FROM THE COMMITTEE:

SENATOR GOODOVER: As a joint sponsor of this bill I would rise in support. I would like an explanation of the difficulties with the amendment.

ANSWER: HB 239 encompasses two types of transactions, the retail transaction, large ticket items and charge accounts. When the retailers were amended out the state interest ceiling would still apply to them. I am in favor of the amendment but I would like to determine whether revolving credit should be accepted. New York had a special session because of the interest rate on credit cards. If this proposed language should be accepted the fact that there is a change of rate will only apply to new purchases. This particular area had not been addressed at the House hearing.

MR. HANSEN suggested the committee consider reinserting the amendment.

SENATOR BOYLAN: Asked of Jerry Raunig "are the rates on farm implements now 12.6%. He discussed the need for clarification of this.

MR. RAUNIG: Because of the availability of money and because it's costing more than the allowable rates many of the dealers are requiring 20, 30 or even 40% down. The trade-in doesn't make up the difference.

MR. CADBY: The federal law has preempted state law. Automobile dealers are the only ones subject to state law. The credit companies who represent farm dealers have provided a higher ceiling.

SENATOR REGAN: In discussing HB 238, since the federal government has already preempted the state I question whether we should enact this bill. The feds have already addressed the problem.

REPRESENTATIVE FABREGA: It covers it in some areas. He discussed the federal discount rate and how it would apply. You now have that money in only some operations. He elaborated further on the rate system and stated that it is bad and that we should do away with it.

SENATOR REGAN: HB 239 addresses the problems of the auto dealers, I am talking about 238.

REPRESENTATIVE FABREGA: Where would you go to get the money. He went on to talk about contracts. You cannot pass one without the other.

SENATOR REGAN: The federal law has already taken care of 238 except for automobile dealers which is added in 239. In terms of 238 if you pass 239 the installment rate has been addressed. 238 has already been done by the federal government. She elaborated further on this topic.

JOHN CADBY: In trying to define the difference, such as a new car sale it is a legal nightmare. The federal law only covers agriculture and commercial over 1,000. It does not apply to consumer loans. We have created a discriminatory situation.

SENATOR REGAN: I have a question on your exhibit D, on 239. How would you feel about an amendment that would indicate prior notice for future charges. She discussed the study in New York.

MR. HANSEN: The federal truth-in-lending already addresses that.

SENATOR BOYLAN: If this bill would pass today and I want to buy a car tomorrow what interest rate would I have to pay or would it be a variable interest rate?

MR. RAUNIG: Starting January 26 after deregulation went into effect, the rates were the same as before they deregulated. This is for auto dealers.

JOHN CADBY: It would depend on the use of the vehicle. The rate is subject to negotiation. The federal law says you can go up to twenty-one percent.

There was lengthy discussion on whether it would be a fixed rate or a variable rate.

SENATOR REGAN: I question the statement made about the interest rate of 25% down and 17% rate only costing \$8 for the year. She elaborated further on this. There was some discussion.

SENATOR BLAYLOCK: I had a call this morning about these bills and the charge was made that banks are not taking auto paper. Is this true?

MR. CADBY: You should ask the car dealers if they are able to sell to banks.

REPRESENTATIVE WALLIN: Yes, sometimes, but at 7, 9 or 11 add-on interest. The banks won't buy that. There was lengthy discussion.

REPRESENTATIVE FABREGA: Lengthy discussion about the amendment. I will work out the language and present it to the committee. I do not agree with a statement by Mr. Kirkland about the \$8.00. Eighteen percent is still eighteen percent.

Mr. Hansen explained the revolving charge account and how much you pay.

REPRESENTATIVE FABREGA: I believe the competition between the banks and the savings and loans will provide the competition that is necessary. The federal truth-in-lending law protects the consumer by requiring that he be informed of the interest rate and of the amount in interest he would have to pay. Leaving the setting of interest rates in the free marketplace eventually could result in rates lower than the limits imposed by the state. The present state law sets maximum rates, but they are often treated as the minimum, too. These rates are the hitching post at which everyone says that's what the legislature says we can charge. I will agree to amend. Because depositors can earn more on their deposit with this bill the depositors will now earn more money. I think the whole thing has come into balance. I would urge your support of both bills.

There was no further discussion and the hearing closed on House Bills 238 and 239.

STATEMENT FOR PUBLIC HEARING ON

HOUSE BILLS 239 and 240

My name is Jerry Raunig. I'm the Executive Vice-President of the Montana Automobile Dealers Association (MADA), which is the trade association for the franchised new car and truck dealers of this state.

The Problem

Many well-publicized factors have contributed to the ill-health of the automobile business in this state, but the biggest problem since the first of January, 1980, has been the shrinking availability of financing for the AVERAGE car buyer.

As the cost of money increased, following the rising prime rate, banks quickly found that Montana's rate ceilings were below their average cost of money, and car financing in this state became a losing proposition.

The disappearance of financing for the average car buyer immediately became the "ultimate problem" for the dealer because he couldn't get financing for many people who wanted to buy cars.

It is true that banks continued to finance cars for their regular customers, but on a very selective and restrictive basis. Some banks have gotten out of the car financing business altogether (except on a direct basis) while others that have stayed in the business are discounting the contracts they buy from dealers. It is important to remember that dealers must co-sign or guarantee those contracts sold to banks or financial institutions even though discounted.

The captive finance companies - - GMAC and Ford Motor Credit (Chrysler Credit does not have an office in Montana and does only a limited amount of business in the state) have done their best with their dealers during these difficult times, but are losing money on every new vehicle contract they buy in Montana.

We question how long they will continue buying contracts at a loss. In addition, not all dealers have access to a captive finance source - - Chrysler - Plymouth - Dodge - all import dealers - AMC - and Jeep dealers have no access to captive finance sources.

It is clear that shrinking financing is eroding the marketing system on which the entire industry is based - the ability of the consumer to buy a car on the installment plan.

A recent random telephone survey of several dealers around Montana indicates that the turn-down rate on consumer financing has been running between 20 and 40% over the last 9 to 10 months. There is no doubt that the scarcity of financing is still a problem today for the average consumer.

The Cause of the Problem

There is no argument about the cause of the problem, or the fact that it is a Montana legislative problem - not national. In fact, last spring the U.S. Senate was addressing the usury problem with a bill to temporarily override state usury limits but failed to take action because it was strongly felt that usury is a state's right.

Ceiling rates for automobile financing by dealers are set forth in the Retail Installment Act enacted in 1959. This law was designed to regulate car financing and protect the consumer by requiring standard provisions in contracts.

These ceilings, now 22 years old, were established with plenty of leeway, with the knowledge that the legislature could change them as need arose. It is significant to note that the prime rate in 1959 was 5%.

These ceiling rates are stated as add-on rates:

Class 1 - \$7 per \$100 per annum for new car

Class 2 - \$9 per \$100 per annum for used car up to 2 years

Class 3 - \$11 per \$100 per annum for used car over 2 years

The rates are translatable into Annual Percentage Rates (APR) which vary slightly depending upon the period of the loan. Using a period of 36 months, because it ties in with the attached rate sheet, we find that the add-on rates are equivalent to an APR of 12.83%, 16.24%, and 19.57%.

What has happened is that lenders have found that 12.83% is well below their average cost of money, and they're not in business to lose money.

The Numbers

At the start of our fiscal year, January 1, 1980, the MADA had 244 members which represented 96% of the 255 franchised new car and truck dealers in this state.

Since January, 1980, more than 30 dealerships have closed their doors. Only a few of these have been taken on by someone else - most of them are still closed. Many of the 500 former employees of these dealerships have moved elsewhere, and many others are still not working.

Our field representative and the registration records from the Registrar's Bureau in Deer Lodge report that new vehicle sales were off by 21% statewide during 1980.

In checking with our dealer body we find that at least 20 other dealers are in difficult financial straits - - placing another 340 jobs in jeopardy.

Other States Legislative Action

In many other states, the car finance ceilings were as low as ours, or low enough to be inadequate, and when the nation-wide skyrocketing rise in interest rates hit, most other state legislatures took action to help their dealers, their economies, and their consumers.

The attached rate sheet shows ceiling rates in effect in 50 states. This sheet is up to date as of December, 1980.

Our neighboring states have all taken the necessary action. Their rates are set forth below as APR rates, based on 48 month loans:

Idaho	18%
North Dakota	18%
South Dakota	20%
Wyoming	18%

The State of New York was the most recent to take action. Effective December 1, 1980, automobile financing was deregulated in New York in a manner similar to this bill by eliminating add-on rates and allowing the competitive marketplace and the availability of money to determine the interest rate negotiated between the retail seller and the buyer.

The Reason We Need Help

The shrinking availability of financing for the average car buyer has become the SHRUNKEN availability of financing. The high-salaried person has little problem, but the average person with a modest income still finds that nobody really wants his new car finance business.

People on the lower end of the economic ladder, who have been considered marginal risks a year ago, but who still might have been qualified because the dealer guaranteed the contract, are simply out of luck now.

If automobile dealers are ever to regain their rightful share of the market, and if we are to safeguard the more than 3500 jobs provided by our dealers, this legislative action is necessary in order that Montana will once again become a reasonable, profitable market for car financing.

We do not feel that eliminating the rate ceilings would lead to overcharging on interest. On the contrary, we feel that deregulation would make the car financing business competitive once again in Montana, particularly with the Savings & Loans now being authorized to get into the consumer finance area.

We feel that passage of this bill would create a situation whereby banks, the captive sources, Savings & Loans, and credit unions would be placed in a very competitive situation in competing for consumer car financing which would tend to keep interest rates down.

We have also attached a sheet showing the difference in monthly payments at varying APR's beginning with our current 12.83% up to 22% which is the highest the prime rate ever reached during 1980. It is interesting to note that the difference between the lowest and the highest interest rates on a \$5,000 - 3 year loan is approximately \$23 per month.

We respectfully urge the committee to give favorable consideration to this bill, and we thank you for the time you have given us.

INTEREST RATES ALLOWABLE ON NEW VEHICLES

<u>STATE</u>	<u>A P R</u>	<u>SPECIAL CONDITIONS</u>
Alabama	17.6%	Plus \$20. fee - No limit over \$5,000.
Alaska	17.6%	
Arizona	No Limit	Seeking constitutional amendment
Arkansas	10.0%	
California	20.75%	
Colorado	18.0%	
Connecticut	16.0%	
District of Columbia	21.5%	
Delaware	No Limit	Auto financing deregulated 2-18-81
Florida	17.6%	
Georgia	17.6%	
Hawaii	18.0%	
Idaho	18.0%	
Illinois	20.75%	
Indiana	18.0%	
Iowa	20.75%	
Kansas	18.0%	
Kentucky	19.19%	
Louisiana	18.0%	
Maine	18.0%	
Maryland	21.5%	
Massachusetts	20.75%	
Michigan	16.5%	
Minnesota	17.6%	
Mississippi	18.0%	This date 5% over Federal discount rate
Missouri	17.6%	
Montana	12.68%	
Nebraska	18.0%	
Nevada	20.75%	
New Hampshire	16.0%	
New Jersey	15.99%	This date 3.0% over Federal discount rate
New Mexico	17.2%	
New York	No Limit	Auto financing deregulated 12-1-80
North Carolina	16.0%	

<u>STATE</u>	<u>A P R</u>	<u>SPECIAL CONDITIONS</u>
North Dakota	18.0%	
Ohio	18.0%	
Oklahoma	18.0%	
Oregon	14.35%	
Pennsylvania		Rates vary with Federal discount rate
Rhode Island	21.0%	
South Carolina	18.0%	
South Dakota	20.0%	
Tennessee	No Limit	
Texas	13.51%	
Utah	18.0%	
Vermont	18.0%	
Virginia	24.0%	
Washington	12.0%	Legislation pending
West Virginia	18.0%	
Wisconsin	17.0%	This date 4.0% over Federal discount rate
Wyoming	18.0%	

MONTHLY PAYMENTS FOR A
\$5,000 LOAN FOR 36 MONTHS

<u>A P R</u>	
12.83%	\$167.68
13%	\$168.47
14%	\$170.89
15%	\$173.33
16%	\$175.79
17%	\$178.26
18%	\$180.76
19%	\$183.28
20%	\$185.82
21%	\$188.38
22%	\$190.96

MONTANA AUTOMOBILE DEALERS ASSOCIATION
INC.



501 N. SANDERS

HELENA, MONTANA 59601

PHONE 442-1233

MEMORANDUM

TO: All MADA Members
FROM: Gerald F. Raunig, Executive Vice President
DATE: January 29, 1981
RE: Legislation on Removal of Usury Limits

At its most recent meeting on January 23, 1981, the MADA Board of Directors discussed the pros and cons of the main street business bill amending the Montana Retail Installment Act to remove the add-on rate ceilings.

After discussing both sides of the issue, the Board voted unanimously to reaffirm the position of support for this legislation.

If you have questions about this position, you should contact your MADA Director for further comment.

mjo

TESTIMONY ON HOUSE BILLS #238 and #239
SENATE BUSINESS AND INDUSTRY COMMITTEE

March 4, 1981

Mr. Chairman and members of the Committee:

I am John Cadby, executive vice president of the Montana Bankers Association. Our Association has as dues paying members the large and small, independent and group, state and national, city and rural, or all 165 banks in the State of Montana. In their behalf, we thank you for giving us this opportunity to speak in support of House Bills #238 and #239.

The attached cites the detrimental effects of interest rate ceilings on the consumer, the farmer, the businessman and the economy of Montana. Also, enclosed is a speech given by a professor of economics to the Arizona legislature who repealed all their ceilings last year. In fact, most countries in the world and many states in this nation have removed all interest rate ceilings leaving it up to the borrower and the lender and the purchaser and the seller to negotiate a mutually agreed upon rate of interest in a free and competitive market.

In this era of deregulation and intensified competition, money like any other commodity should be subject to the marketplace and not the law. Congress has recognized this by deregulating financial institutions to stimulate competition, by preempting state usury laws to prevent distortions of credit and eliminating ceilings on savings to stimulate economic growth.

Interest rate ceilings drive money out of the state, restricts credit availability, creates discrimination, penalizes savers, does not protect the consumer and fuels inflation. In short, interest rate ceilings are no good for anyone in Montana and should be abolished once and for all by passing House Bills #238 and #239.

Today we have legal counsel for MBA, Mr. George Bennett and bankers to respond to questions if any from members of the committee. We also have additional studies and articles on the subject of interest rates by economists and experts throughout the nation in the event the committee would like more information on this subject.

* * * * *

EFFECTS OF INTEREST RATE CEILINGS ON:

Economy and Inflation

Statistics show states without interest rate ceilings have better economies than states with strict usury laws.

Depositors receiving $5\frac{1}{2}\%$ on savings and with inflation at 13% are losing $7\frac{1}{2}\%$ on purchasing power plus income taxes must be paid on the $5\frac{1}{2}\%$ interest received. The result is a lower percentage of savings of disposable income, thereby resulting in less investment capital for economic growth, less productivity and higher inflation.

Inflation is a primary cause of high interest rates. When inflation was zero, banks were lending money at 3%. Twenty years ago the inflation rate was 2% and the national prime rate average was less than 5%, even though Montana had a usury ceiling of 10%.

Most foreign countries do not have the interest rate ceilings. England repealed their usury law over 100 years ago.

Six states have no ceilings on regulated lenders. South Dakota removed interest rate ceilings on regulated lenders last year. California removed their ceilings on regulated lenders 50 years ago. New York and Arizona recently removed all interest rate ceilings.

Availability of Capital

Interest rate ceilings drive money out of the state, consequently there is less working capital for farmers and businessmen and less credit for consumers.

Money does not recognize any geographical boundaries and flows to the highest bidder. Public funds as well as individual savings will flow out of state if Montana's financial institutions are prohibited from offering competitive interest rates.

Savers

Interest rate ceilings penalize savers by preventing financial institutions from paying marketplace rates.

Regulation Q is being phased out by Federal Law thereby subjecting the saver to the marketplace.

High interest rates have educated savers to shop for the highest yield.

Borrowers

Restrictive interest rate ceilings increase demand and decrease the supply of funds, so funds are rationed to favored customers.

Interest rate ceilings hurt those persons they are designed to help namely the poor, young and those less credit worthy due to limited amounts of capital.

Credit contracts are not only subject to rates of interest but maturity, down payments, security required and credibility of the purchaser. The lower the interest rate ceilings, the more restrictive other credit terms become.

Consumer Protection

"The best allocation of resources and the best protection to the consumer is a freely competitive market". (Dr. John Buchler)

In a free market, interest rates are self-regulating and self controlling.

To single out the credit market to protect the gullible does not make sense when there are no price controls on any other product or service in the marketplace.

Between government regulators and fierce competition it is inconceivable a regulated lender could gouge its unsophisticated borrowers.

The discipline of the marketplace is the best discipline in controlling inflation and interest rates.

The Federal Truth and Lending Act requires all lenders and retailers to use the Annual Percentage Rate so borrowers and purchasers are able to compare rates advertised by financial institutions and retail stores.

Stability of Financial Institutions

Today, eighty percent of loans are funded by purchased money that is acquired by paying the market rate and not low cost savings and checking accounts as in the past. A profitable bank is the best security for the depositor, even preferable to FDIC Insurance. All banks, savings and loan and credit unions are vulnerable to high inflation and unstable interest rates. Their only hope is the ability to adjust to sudden fluctuations in the marketplace.

Any interest rate ceilings cannot adjust to a volatile interest rate market as has been experienced in the United States for the past six years. Said rates would have to be adjusted every legislative session and still would not keep up with the daily fluctuations in the marketplace. The same is true for any floating interest rate ceiling tied to a governmental indicator as the discount rate is a politically established rate to attempt to control inflation and is not changed necessarily when changes take place in the marketplace.

Exemptions to State Usury Law

The first exception to Montana's archaic 10% usury rate was in 1889 when pawn-brokers were allowed to charge 3% per month or 36% per annum. In 1911 wage brokers were allowed to charge 12% and in 1963 credit unions were allowed to charge 1% per month or 12% per annum. In 1975, the legislature raised the credit union rate to 1 $\frac{1}{4}$ % per month.

In 1959, the Montana legislature carved out another exception creating the Montana Consumer Loan Act, allowing finance companies to charge higher rates of interest which has been subsequently amended to increase the size of the loans and provide higher interest rates. Also in 1959, the legislature enacted the Montana Retail Installment Sales Act, allowing higher rates of interest on all retail installment loans including motor vehicle sales. In 1969, the banks were allowed to charge higher interest rates on installment loans.

Up until 1975, the general usury statute provided a maximum interest rate to 10% per annum, except for the above mentioned exceptions. In 1975 the Montana legislature enacted a floating ceiling which is in conflict with the exceptions above.

Discrimination

Small banks are unfairly penalized by interest rate ceilings as larger banks have a higher percentage of loans not covered by interest rate ceilings.

Banks, credit unions and savings and loans are discriminated against, being subject to ceilings when PCA's, Federal Land Banks and other competitors are not subject to any interest rate laws.

Federally chartered financial institutions such as credit unions are allowed to charge a higher rate of interest than state chartered financial institutions.

Farm equipment and truck manufactures credit companies are allowed by federal law to charge a higher interest rate whereas automobile and appliance dealers in Montana and their credit companies are subject to state law and lower interest rate ceilings.

It is virtually impossible to define a consumer loan, installment loan, a personal loan, agricultural or business loan to determine the legal rate of interest. All such loans would qualify as installment loans under state law, which defines an installment loan as any loan with one or more payments, yet legal ceilings vary from 12½% to 21% under state and federal laws, depending on the type of loan.

The Montana Development Credit Corporation is unable to make venture capital loans to high risk borrowers, due to the restrictive usury law. Typically, Montana's floating usury statute is below the average prime rate.

Highlights of Speech of

Dr. John Buehler, Professor of Economics, University of Arizona

February 26, 1980

It is my understanding I was invited here this evening to comment on the question of usury laws. I would like to make this recommendation . . . ~~that there is no better program you could follow than to remove all ceilings on all interest rates.~~ Interest rate is the price of credit. As other prices rise, the price of credit rises also. There is a misconception in this country that the reason interest rates are going up now is because the federal government is doing something about it. In a sense, this is true, but interest rates are rising because the federal government and the federal reserve system has followed a highly inflationary policy since late 1975. In a very crude sense, one can take about 3% on top of inflation rates to come up with a nominal rate of interest. The reason we are in a very dangerous situation right now is because the nominal rate of interest, that is, the interest rate that you and I see in the marketplace, whether we are savers or whether we are lenders, has actually been below the expected rate of inflation. ~~And~~ should the public ever adjust to the actual rate of inflation, which for the month of January was in an excess of 16% of consumer prices, and if you add another 3% onto that, you are looking at a 19% to 20% long-term rate.

To get on with the main topic, the trouble with regulation is that it interferes with the market. ~~The best allocation of resources and the best protection to the consumer is a freely competitive market.~~ The only justification in any market is when that market is monopolized. In today's world, financial markets are difficult, if not impossible, to monopolize, simply because of the mobility of funds. There is no bank that can monopolize the market in a large urban area because funds can be moved across state lines and national boundaries with telephone calls. So what are the consequences of interest rate ceilings? You set the regulative rate below the true market equilibrium rate. First of all you have a situation where the demand exceeds the supply and shortages must develop. The available quantity that is supplied now has to be rationed. Now some will be excluded from the market. Normally, the test will be on risk. What it comes down to, is there going to be an income test or a wealth test? There are others who are going to be subsidized. In other words, they are going to be paying a lower rate than they would otherwise pay if you allowed the market to work. ~~So if you were a very rich person, then you ought to favor usury limits. Because you will wind up subsidizing the rich at the expense of the poor.~~ In addition to that the available quantity of credit that appears on the market is going to be less than otherwise. So what does this mean? It means that funds are going to be shifted to other alternatives or they are going to leave the region entirely. And I would submit to you that Arizona is a growth state. ~~You want to attract capital from outside. You do not want to be exporting it.~~ The largest bank and the second largest bank in the state look over their shoulders constantly to see what the other banks are going to do. More importantly, they are not just concerned about the banks in Arizona because funds can be moved very easily from one state to another with a telephone call. In other words if a small bank in Arizona is in a position to take a very important loan, and is competing against the largest bank in the state, it is not limited to its own resources. It can move in the market and very quickly.

There is another concept of regulated rates. It is that growth will suffer, employment, income and tax revenue will be lower. In addition to that, it is a direct encouragement to loan sharking. ~~If you want to establish a loan shark market, then set the regulated rate below the equilibrium rate, and you have created a new market for people to enter, with all the unfortunate consequences we have observed when that occurs.~~

Now you might want to consider what the impact would have been in Arizona if a usury law had been binding in sometime in the past. The obvious question to ask, is what would have been the right rate? Once you move away from a free market rate then somebody has got to decide what the right rate is. Nobody is smart enough to know that, because once you are below the true equilibrium rate you are going to have a misallocation of resources. What has happened in Arizona is that in the last four or five years, because it is a growth state, employment, income, tax revenue and wealth have increased dramatically. In fact the individual property owner has found that housing has been the best hedge against inflation. Inflation is somewhat capricious. It hits very hard at different groups depending upon what assets you own or do not own. The one group that has survived this inflation very well, in fact profited from it, is the residential homeowner. Because the rate of inflation in residential housing has exceeded the rate of inflation in consumer prices. The groups that have been hurt the hardest are the working poor, and surprising enough the rich people who have had bonds in their portfolio. In fact the people who are depending upon their pensions sometime down the road, might look over their shoulder to see what has happened to those pension funds in the last week, as a result of a collapse of the bond market. Now, the question is, how high are interest rates? When do you want to do something about it? Well, interest rates are not high independent of everything else. They are related to the rate of inflation. If the rate of inflation goes up, interest rates are bound to go up. And if they come down, the consumer is actually protected to some extent especially on residential mortgages, because the individual who has taken on a 12% mortgage today, if interest rates should go back to the rates of the 1960's, he will have the option of refinancing, although he will pay some penalties.

The problem we have had in this country for the past four or five years is that the effective rate of interest has been negative. So borrowing money has been a heck of a bargain. If you borrow money at 10%, the inflation rate is 12%, you can't lose. In fact, the guy lending it becomes the sucker, it seems. The people have figured that out as far as housing is concerned. While we have lamented the fact that mortgage rates have risen, the fact of the matter is the inflation rate on housing has far outstripped them. If the price of housing is going up at 2% a month, 24% a year, and you are only borrowing 10% of the money, and you are paying 12%, you could pay 20% and still make a substantial profit. So the interest rate is not going to restrict you from borrowing the money to buy the house, as long as you are faced with that kind of an expected rate of inflation.

Housing starts are down now because the rate is starting to bite on some groups, and there is also some question as to the availability of funds in some parts of the country. Where some states do have usury laws, funds are moving out of that area into higher rates of return. So there is some problems with availability.

We have to look at the root causes of inflation. And I think the root cause of inflation is very clear. It results from an over-expansion in the money supply in the central banks. What will happen if interest rates rise and the federal reserve system at the same time tightens down and does not contribute to a further expansion in the money supply, aggregate demand will slow down. The growth in aggregate demand will be arrested, then as the individual businessman tries to pass the higher interest costs on to

the consumer, the field will be faced with resistance. There is going to be tremendous pressures on the federal reserve system if we start to head into a recession.

Some of what we have observed in the bond market this last week is reminiscent in what happened in the stock market crash of 1929. Things never happen in the same way twice. But if the public believes, not only in this country but in other countries as well, if the United States is not going to deal effectively with the rate of inflation, and if they are going to continue to pump money into the system, nobody is going to want to hold bonds, and nobody is going to want to hold mortgages. And the way you avoid suffering a substantial capital loss is to unload those instruments — get rid of them before the price goes down and the act of doing this will drive the price down and drive the interest rate further.

To go back again, we have generated an inflation rate in this country that is not sustainable over a long period of time. What has happened is the rates of inflation has outstripped the rising interest rates. If you are a lender, you do not want to lend me a hundred dollars for a year at 10% interest if over the course of that year prices are going up to 15%, because you are a loser. Now what has happened in this country is that the public has not adjusted to the actual rate of inflation. In fact, the public has had a lot more confidence in our system than perhaps they have had any right to have. So you have had a rate of inflation that has far outstripped interest rates. Now if the public comes to the conclusion that the government is not going to deal effectively with the rate of inflation, and they adjust their own behavior accordingly, then only a fool would continue to hold dead instruments. This does not apply just to people in the United States — it applies to the OPEC countries as well. In other words, you do not want to hold an asset that is going to go down in price. And the best way to beat that game is to sell it before it goes down. So the act of everybody selling those instruments to beat the price decline, which in turn will generate a price decline, and I would submit that this is partly what has happened in the bond market today. Now the federal reserve system has moved to try and tighten up on the money supply. Apparently they made some efforts in October of 1979, but if you have spent four or five years screwing up the system, you are not going to put it back in order in six or nine months. It will probably take an extended period of time, to get the ship back on course. For one thing, you have got to convince people that hold these assets that you do mean business. And if they have watched you misbehave over a long period of time, like going to church for a couple of times in a row, isn't going to convince them that you have seen the light. They are going to require a great deal more gratification of a tightening up policy before they are going to respond. So the problem is that we may have gone too far already. We may not be able to arrest the kind of speculation that is going on.

Now again, looking at it from the states standpoint, there is very little the state can do about it. You are at the mercy of the national economy. Interest rates and money markets are national markets — not local markets. It can move money around too quickly. If you sell some securities through your broker, the sale of those securities can be transmitted to the New York market within minutes. ~~The worst thing a state can do, however, is to generate regulations which is going to interfere with the free flow of credit that is available.~~

Why do we have usury laws in the first place? I have always wondered about that myself. No one seems to say we should control the price of Coors beer or General Motors cars; — we don't seem to worry about that, but we do worry about the price of credit. And the price of credit is just another price itself. Yet we feel compelled to do something different there. Some of it may have religious origins, and Sister Clare may know more about this than I, but it is true that back in the middle ages when usury laws

were instigated, the countries where they were very slow in being removed, their growth and development was arrested. Spain and Portugal lagged very far behind other European countries because of usury laws. What would happen here if this state introduced a usury law is that the capital will leave the area. Again, we are a growing state. We need to be an importer of capital, we really don't want to export it. Again this applies to whether you're talking about the interest rate on residential mortgages or bank credit cards or the interest rate paid to savers.

Unfortunately, what has happened in this country is that the people who can least afford it are the ones who have been discriminated against. If you have a hundred thousand dollars, you have many options. If you have fifty dollars, your options are pretty much narrowed down to passbook savings, and those are regulated. This is not fair and it is not equitable. So there again, you have a case where regulation comes down and it hits very hard on lower income individuals.

There is some misconception that banks generate a tremendous amount of profit. However, if you take a look at the rate of return on bank capital, it is no better, and sometimes a heck of a lot worse than the rate of return on other types of capital. So common sense would dictate that the rate of return on bank capital is not excessible. If you need further confirmation on this, take a look at the cost of capital to the banks right now. At the close of business today the federal funds rate, that is the rate on one day money, was 14 1/8%. The interest rate on ninety day CD's is 15% but the effective costs of the banks is 17.86% because the banks have to keep reserves, that is non income running assets against those reserves. The interest rates on six month T-bill CD's is 13.5% and the effective rate is 13.85%. So the day is pretty much over where the banks can get money from their depositors at zero return or from checking accounts or 5.25% from savings accounts. They have to go out into the market and slug it out like everyone else. The last thing that we would want is to have an unhealthy institutional structure in this country. Because it is one of the institutions that has made this country very productive.

So in conclusion I would strongly recommend that you let the market work. Have confidence in the market and do not impose artificial ceilings because the costs are very, very high and they are also very inequitable.

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

HOUSE BILL 239

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, MY NAME IS BRUCE SIMON. I AM FROM BILLINGS, MONTANA WHERE MY BROTHER AND I OWN AND OPERATE COLE'S DEPARTMENT STORE.

I AM A RETAILER, BY CHOICE AND HAVE HAD TO ENTER THE AREA OF FINANCING THE SALES I MAKE IN ORDER TO COMPETE WITH THE LARGER STORES THAT HAVE HAD REVOLVING CHARGE ACCOUNTS FOR YEARS.

IT TAKES A LOT OF CAPITAL TO MAINTAIN ADEQUATE STOCK AND INVENTORY IN ANY RETAIL OUTLET. I HAVE A LOT OF ADDITIONAL CAPITAL TIED UP IN FURNITURE, FIXTURES, EQUIPMENT, ETC.,

IT TAKES SO MUCH MONEY TO MANAGE THE BASIC NEEDS OF OUR BUSINESS AND WE MUST ALSO HAVE ACCESS TO ADDITIONAL MONEY THAT WE CAN BORROW FROM TIME TO TIME. SINCE WE HAVE BEEN FORCED INTO THE FINANCING OF A LARGE PERCENTAGE OF OUR SALES, THE AMOUNT OF MONEY THAT WE MUST BORROW HAS INCREASED MARKEDLY.

IN ALL BUSINESSES WHERE BORROWED MONEY IS USED TO FINANCE THE OPERATION, THE BASIC IDEA IS TO GET A LARGER RETURN FROM THE MONEY THAN WE ARE REQUIRED TO PAY FOR ITS USE. THIS IS BECOMING MORE AND MORE DIFFICULT, IF NOT IMPOSSIBLE.

IF HOUSE BILL 239 IS ALLOWED TO GO THROUGH COMMITTEE, TO THE SENATE FLOOR AND IS PASSED TO BECOME LAW WITHOUT BEING AMENDED TO RESTORE IT TO THE WAY IT WAS WHEN DRAFTED AND INTRODUCED (INCLUDING RETAILERS WITHIN THE PROVISIONS TO REMOVE INTEREST RATE CEILINGS) WE WILL BE, BY LAW, PLACED

IN A POSITION WHERE WE WILL NO LONGER BE ABLE TO BE COMPETITIVE. WE WILL HAVE TO STOP FINANCING ANY OF OUR SALES. WE WILL FIND IT ALMOST IMPOSSIBLE TO BORROW THE NECESSARY MONEY. WE WILL LOSE SALES VOLUME, PROFIT AND WILL PROBABLY, IN TIME, BE FORCED TO CLOSE OUR DOORS ELIMINATING ONE MORE MONTANA OWNED BUSINESS WHERE MONTANANS CAN TRUELY "SHOP AT HOME". THE VOID LEFT BY OUR CLOSURE WILL BE QUICKLY FILLED BY EXPANSION OR NEW LOCATION OF ONE OF THE MAJOR CHAIN STORES THROUGH WHICH MONEY THAT SHOULD STAY IN MONTANA AND BE CONTINUALLY CIRCULATED TO IMPROVE OUR ECONOMY WILL BE TRANSFERRED OUT-OF-STATE.

THESE LARGE CHAINS WILL BE HURT TOO, BUT NOT TO THE EXTENT THAT MONTANA BUSINESSES WILL. THEY HAVE A MUCH GREATER BORROWING POWER. MORE AREAS OF ALTERNATEIVE FINANCING AND DIVERSIFICATION TO SUPPORT OR SUBSIDIZE ANY LOSSES IN THEIR CONSUMER CREDIT OPERATIONS.

I CAN SEE THE REASONING BEHIND THE AMENDMENT THAT REMOVED US AS RETAILERS FROM EQUAL TREATMENT UNDER HOUSE BILL 239. HOWEVER, I ALSO KNOW THAT NO AMOUNT OF PROTECTION CAN STOP A CONSUMER FROM GETTING INTO DEBT OVER HIS HEAD IF HE IS SO INCLINED. WHEN A PERSON IS AN IMPULSIVE BUYER OR BUYS IN THE "HEAT OF PASSION" NO DISCLOSURE OF ANY TYPE IN ANY AMOUNT IS GOING TO DISSUADE HIM. THAT TYPE OF PERSON BUYS IF THERE IS ANY POSSIBLE WAY HE CAN BUY NOW AND WILL NOT WORRY ABOUT ANY PAYMENTS TO THE ABILITY OF LACK OF ABILITY TO MAKE THEM UNTIL THEY BECOME DUE. HE ALWAYS LIVES ON THE DREAM THAT SOMETHING MIGHT HAPPEN BETWEEN NOW AND THEN THAT WILL PUT HIM ON EASY STREET. HE ALWAYS LIVES WITH, NOT ONLY THE HOPE, BUT THE BELIEF THAT TOMORROW HIS SHIP WILL COME IN.

THE MAJOR CHAINS WILL STILL FIND A WAY TO MAKE BUYING ON CREDIT AVAILABLE TO THEIR CUSTOMERS.

JUST THE OTHER DAY AN ARTICLE IN ONE OF THE LEADING TRADE PAPERS QUOTED THE CHAIRMAN OF THE BOARD OF SEARS ROEBUCK AND COMPANY AS TELLING ABOUT SEARS SALES FIGURES, THE FACT THAT THEY OWN AND OPERATE THEIR OWN INSURANCE COMPANY, THAT THEY OWN THEIR OWN FINANCE COMPANY, AND THAT THEY WERE AND ARE LOOKING AT FURTHER DIVERSIFICATION AND THEN QUOTED HIM AGAIN WITH WORDS TO THE EFFECT THAT SOMEDAY SOON YOU MIGHT BE ABLE TO FINANCE YOUR HOME OR WRITE YOUR CHECKS ON A SEARS ROEBUCK AND COMPANY BANK AND TRUST COMPANY. IF THIS SHOULD COME TO PASS AND SEARS SHOULD HAVE THEIR OWN BANK, LETS SAY IN A STATE WITH NO INTEREST RATE CEILINGS, THEY COULD ISSUE THEIR OWN SEARS BANK CREDIT CARDS AND BE FREE TO CHARGE WHATEVER INTEREST RATES THEY WANT TO IN MONTANA WITH COMPLETE AND UTTER DISREGARD TO THIS OR ANY OTHER MONTANA LAW.

THE AMENDMENT CURRENTLY RESTRICTING HOUSE BILL 239 TO EXCLUDE RETAILERS OPEN-END CREDIT PROGRAMS FROM ITS PROVISIONS MIGHT PUT A DENT IN THE BIG BOYS, BUT IT COULD VERY WELL BE FATAL TO MONTANA'S OWN BUSINESSES.

WHY ALLOW AN AMENDMENT THAT WOULD NOT HAVE ANY EFFECT ON BANK CREDIT CARDS ISSUED BY BANKS CHARTERED OUT-OF-STATE, THAT WOULD HARDLY EVEN BE NOTICED BY THE LARGE CHAINS, AND THAT WOULD IRREPARABLY DAMAGE MONTANA'S OWN BUSINESSES?

IF WE DO ALLOW A CUSTOMER TO GET IN OVER HIS HEAD, NOT ONLY DOES THE CUSTOMER SUFFER, BUT WE DO TOO. WE CAN'T AFFORD TO WRITE OFF UNCOLLECTABLE ACCOUNTS. WE CAN'T EVEN AFFORD TO PAY A COLLECTION AGENCY TO MAKE SUCH COLLECTIONS BECAUSE EVEN IF THEY ARE SUCCESSFUL WE STILL LOSE MONEY. WE ARE HERE IN

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF - - -HOUSE BILL 239- - - WITH AMENDMENT

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE. FOR THE RECORD, MY NAME IS LOIS TOPLARSKI, I LIVE IN BUTTE, MONTANA WHERE MY HUSBAND AND I OWN AND OPERATE THE LENZ CARD AND GIFT SHOP.

I AM HAPPY TO BE ABLE TO SAY THAT IN OUR TYPE OF BUSINESS THERE IS NOT MUCH CALL FOR CREDIT AND WE DO NOT OFFER CREDIT TO OUR CUSTOMERS.

I AM NOT HERE TODAY TO TELL YOU ALL OF THE WOES OF THOSE RETAILERS WHO DO HAVE TO OFFER OR EXTEND CREDIT TO THEIR CUSTOMERS TO BE COMPETITIVE. YOU HAVE HEARD THE FACTS OF THAT TYPE SITUATION ANYWAY.

I AM HERE TO READ AND PRESENT TO EACH OF YOU A COPY OF A MONTANA RETAIL ASSOCIATION REPORT "MONTANA CONSUMER CREDIT AND INTEREST RATE CEILINGS".

PLEASE REMEMBER THAT THIS REPORT WAS COMPLETED PRIOR TO OUR HAVING ANY IDEA THAT RETAILERS WOULD HAVE ANY CHANCE OF BEING EXCLUDED FROM THE PROVISIONS OF HOUSE BILL 239 BY AMENDMENT.

I ASK YOU TO GIVE THIS REPORT AND THE TESTIMONY YOU HAVE HEARD JUST PREVIOUS TO THIS REPORT YOUR SERIOUS CONSIDERATION AND ATTENTION. AMENDMENT OF HOUSE BILL 239 TO INCLUDE RETAIL CREDIT ACCOUNTS IS NOT ONLY IMPORTANT TO RETAILERS THAT EXTEND THAT CREDIT, TO RETAILERS IN GENERAL, BUT TO THE CITIZENS AND THE ECONOMY OF MONTANA AS WELL. IT WILL HELP TO CREATE THAT "GOOD BUSINESS CLIMATE" WE ALL KNOW IS NEEDED AND THAT SO MANY

PEOPLE TALK ABOUT.

WE ALL TEND TO KEEP LOOKING FOR A "QUICK FIX" FOR THIS MOST COMPLICATED PROBLEM. THERE IS NO ONE THING WE CAN DO TO CREATE THAT "GOOD BUSINESS CLIMATE", BUT THERE IS ONE THING WE CAN DO THAT WILL BE A BIG STEP IN THE DIRECTION OF CREATION OF A FAVORABLE CLIMATE FOR BUSINESS IN MONTANA, AND THAT IS THE AMENDMENT OF HOUSE BILL 239, SO THAT IT WILL INCLUDE RETAILERS WITHIN ITS PROVISIONS AND THEN PASSING IT ON TO THE SEANTE AS A WHOLE WITH A "DO PASS" RECOMMENDATION.

MONTANA RETAIL ASSOCIATION

REPORT: MONTANA CONSUMER CREDIT AND INTEREST RATE CEILINGS

JANUARY 1, 1981

A HEALTHY RETAILING INDUSTRY PROMOTES A HEALTHY MONTANA ECONOMY

Retailing is a vital part of Montana's economic well being.

Consider the following:

- * Retailing, as the state's second largest employer, employs approximately 57,000 people and annually pays more than \$500 million in salaries. We are prime employers of unskilled workers and we provide the major first level entry jobs for youth.
- * Retailing has annual sales in Montana of over \$3 billion, from which millions are paid in income, property and corporate taxes.
- * Shopping centers contribute substantially to the area's economic and tax base. Retail facilities create non-retail forms of employment (construction, maintenance, security, advertising, transportation, printing and other services).

REALISTIC CREDIT RATES WILL KEEP THE STATE COMPETITIVE

Montana competes with every other state in attracting and maintaining investment capital.

- * Credit rate ceilings which result in credit operation losses are a disincentive to business expansion, forcing companies to look to states with more favorable laws. Operating losses threaten the existence of marginal stores and discourage the location of new facilities which might be only marginally profitable in their early years.

- * Lack of business expansion in Montana will adversely affect jobs and taxes.
- * Business diversions to neighboring states will jeopardize existing Montana businesses which must compete with those in neighboring states.
- * Retailers establishing or expanding in Montana are not offering new credit plans, where new in-house credit plans would normally strengthen merchandising policies and growth opportunities.

EXISTING RATES DO NOT COVER THE COST OF EXTENDING RETAIL CREDIT

Retailer's costs of providing credit include a variety of expenses for the extension, maintenance and collection of credit accounts. In addition, like their customers, retailers must pay to borrow money, in this case to finance credit account balances.

- * In 1972, one year after Montana set interest rate ceilings at 18%, retail creditors participated in a major Cost of Credit Study. They represented typical small, medium and large merchants offering credit. NOT ONE recovered their 1972 cost of extending credit charging a rate of 18%. Losses as a percent of credit sales ranged as follows:

<u>Store Type</u>			
<u>Chains</u>	<u>Public</u>	<u>Private</u>	<u>Combined</u>
2.49%	4.42%	6.00%	3.71%

For example, a chain store with \$10 million in credit sales would have a credit operating deficit of \$249,000.

- * Costs have risen sharply since adoption of Montana's rate ceiling in 1971. Comparisons of some are:

	<u>1971</u>	<u>1981</u>	<u>Percent Increase</u>
Postage	\$.08	\$.15	87.5%
Minimum Wage	\$1.60	\$3.35	109.4%
Soc. Security Tax	5.20%	6.65%	27.9%
Wage Base	\$9,000	\$29,700	230%
Prime Rate (Approx.)	5.2%	21.5+ %	313.5%

- * Payroll, postage and cost of capital make up the bulk of a creditor's total expenses in the extension of credit. In 1971, these costs represented the following percentages of total expense:

<u>Expense Category</u>	<u>Store Type</u>			
	<u>Chain</u>	<u>Public</u>	<u>Private</u>	<u>All Stores</u>
Payroll costs (incl. S.S. taxes)	33%	16%	30%	22%
Postage	4%	4%	4%	4%
Cost of Capital	<u>41%</u>	<u>51%</u>	<u>44%</u>	<u>49%</u>
% total of these expenses	78%	65%	78%	75%

Since the 1971 survey, these expenses have doubled, while credit rate ceilings have remained unchanged.

CREDIT RATE CEILINGS DO NOT PROTECT CONSUMERS

- * Normally credit-worthy consumers who represent marginal risks are now denied credit. This prevents consumers from establishing or rehabilitating their line of credit with Montana creditors. Unfortunately, the majority of these consumers have low incomes and often are young adults or the elderly.

* Increased pressure by merchants and banks to minimize outstanding delinquencies result in earlier attorney collection activity and add to the number of judgements and bankruptcies. Such reports reflect adversely on consumer credit histories.

* Credit operating deficits and high fees charged by financing agents to merchants who no longer offer or administer their own credit plans significantly distort cash prices. Consequently, cash customers might pay for a service they do not receive. This would be particularly unfair to consumers who were denied credit or elected not to use that service.

* Current rate ceilings became less meaningful as some creditors charged rates in excess of those allowed to other creditors. For example, a bank in a state with a higher rate or no rate ceiling can charge a Montana consumer a higher rate than a Montana creditor could for the same form of credit.

IMPACT OF CURRENT CONDITIONS ON RETAILERS

Finance charge ceilings seriously affect the current and future viability of the retail community.

* Small retailers once offered their own credit plans as a merchandising tool which provided a useful service to their customers. Most have now abandoned their own credit plans and are dependent on financing agents (bankcards and others) to provide the credit service vital to their business. Having abandoned their plans, a large segment of their business is dictated not by their own merchandising strategies but the lending community's policies.

- * Charges by financing agents are already at levels that jeopardize the financial ability of small retailers to remain in business.
- * Failure on the part of the Montana lending community to continue serving the needs of Montana retailers will result in intervention by out-of-state lenders who need not comply with Montana limitations. This will detrimentally affect relations between retailers and their Montana sources of credit for other needs such as inventory and business loans.
- * Artificially low finance charge ceilings, combined with relatively high rates of return on savings and investments, encourages misuse of retail credit. Under present conditions, a consumer with a savings certificate or money market account of \$1500 has no incentive to repay from his savings a credit obligation in the same amount. Thus, the retailer's credit resources are tied up financing purchases that would normally not be financed.

COMPARISON WITH OTHER STATES

* Unregulated rates have long been in effect in other states and are being adopted elsewhere. Three states, Kentucky, New Hampshire and Oregon, have long histories of unregulated finance charges. Arizona and New York have recently done away with their statutory rate ceilings.

* The absence of rate ceilings have not resulted in exhorbitant finance charges. For example, in New Hampshire, the bulk of retailers are still under 19.5% for rates on consumer credit. The explanation for this is simple. Each retailer attempts to remain competitive with other stores in its market, using credit rates to efficiently and equitably allocate the cost of doing business.

CONSUMERS SUFFER WHEN COMPETITION DIMINISHES

* Rate ceilings destroy competition. Lack of competition does not protect consumers - it hurts them. In Montana, retailers are restricted to a rate that is lower than the actual cost of extending credit. This forces retailers to not extend credit to otherwise credit-worthy borrowers. Some of these people borrow elsewhere at higher rates.

* Rate ceilings fixed at unrealistically low levels preclude competition among creditors, forcing them all to charge the maximum permissible amount. Thus, there is no opportunity for consumer savings from differing, competing plans.

* An unregulated market which encouraged competition would insure that household goods could be brought on credit at the best possible rate, not on the only terms available.

SUMMARY

* Rate ceilings have become inappropriate and impractical in today's rapidly changing credit market. Legislatures can no longer keep up with the frequent fluctuations and unfortunately cannot control them. It would be in the best interest of all to decontrol credit rates and allow natural competitive forces to be restored to the marketplace.

* Statutory credit rate ceilings hurt the state's economy by making retailing a less attractive investment in Montana than in other neighboring states. They hurt consumers by forcing credit grantors to more selectively extend credit and shift the cost of credit into non-credit operations. Higher risk applicants - to whom credit is a necessity rather than a luxury - are denied credit when the statutory rate is too low to cover the risk. Customers paying with cash must subsidize credit customers by paying higher prices charged to cover credit losses.

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF - - - House Bill 239 - - - WITH AMENDMENT

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE. MY NAME IS MIKE DEMARCO. I AM THE COMPTROLLER FOR KAYFMAN'S MENSWEAR OF MONTANA.

I APPEAR HERE TODAY IN SUPPORT OF HOUSE BILL 239 WITH AMENDMENT TO INCLUDE RETAIL CONSUMER CREDIT ACCOUNTS THAT ARE COMMONLY REFERED TO AS "REVOLVING CHARGE ACCOUNTS" AND/OR "OPEN-END ACCOUNTS".

AN ARTICLE IN THE FEBRUARY 4, 1981 EDITION OF THE HELENA INDEPENDENT RECORD IS ATTACHED AS EXHIBIT "A". AS YOU WILL NOTE, IT STATES, "THE SWEEPING ELIMINATION OF STATE USURY LAWS DOES NOT APPLY TO REVOLVING CHARGE ACCOUNTS, INCLUDING CREDIT CARDS,". IT FURTHER QUOTES REPRESENTATIVE FABREGA, "FEDERAL TRUTH-IN-LENDING DISCLOSURE REQUIREMENTS INCLUDE SUFFICIENT SAFEGUARDS TO MAKE BORROWERS AWARE OF INTEREST COSTS, HE ARGUED, ADDING THAT WHERE PRECISE DOLLAR DISCLOSURES ARE NOT WELL KNOWN TO CONSUMERS - SUCH AS WITH CREDIT CARDS AND RETAIL REVOLVING CHARGE ACCOUNTS - THE OLD INTEREST LIMITATIONS WILL REMAIN."

THE AMENDMENT THAT EXCLUDES CREDIT CARDS AND RETAIL REVOLVING CHARGE ACCOUNTS FROM THE PROVISIONS UNDER THIS BILL WAS WELL INTENDED. IT WAS PURPORTEDLY GOING TO ELIMINATE POTENTIAL ABUSES BY CREDIT CARD COMPANIES AND THOSE PROVIDERS OF CONSUMER CREDIT THAT USE OPEN-END REVOLVING CHARGE PLANS.

AS WE ARE NOW AWARE, THE CREDIT CARD COMPANIES CAN NOT BE LIMITED BY STATE LEGISLATION BECAUSE OF FEDERAL PRE-EMPTION. IT MIGHT BE ARGUED THAT THE LIMITED PROTECTION THAT THIS AMENDMENT MIGHT PROVIDE CONSUMER CREDIT PURCHASERS IN MONTANA OFF-SETS THE DAMAGES IT WILL DO TO LOCAL ESTABLISHED AND LEGITIMATE MONTANA OWNED AND OPERATED RETAIL ESTABLISHMENTS. HOWEVER, AS WE CAN NOW SEE, THE PROTECTION IT MIGHT PROVIDE AGAINST ABUSES BY OUT-OF-STATE INTERESTS, IS VERY LIMITED, ALMOST TO THE POINT OF BEING NON-EXISTANT. FURTHER, WE NOW CAN SEE THAT EVEN IF SUCH LIMITED PROTECTION AGAINST THESE OUT-OF-STATE INTERESTS COULD BE STRENGTHENED ENOUGH TO BE A DETERRENT, THEY WOULD, IF THEY COULD NOT FIND ANY OTHER WAY AROUND THE LAW, JUST ELIMINATE THEIR OWN IN-HOUSE PROGRAMS AND RESORT BACK TO THE CREDIT CARDS (LIKE K-MART HAS) AND WE WOULD BE FACED WITH EVEN GREATER ABUSES THAN BEFORE.

I AM ATTACHING AS EXHIBIT "B" A COPY OF AN ARTICLE COPIED FROM THE RETAIL PROPHET, THAT SHOWS THE NEW REQUIREMENTS FOR DISCLOSURE UNDER FEDERAL TRUTH-IN-LENDING, THAT WE, THE RETAILERS, DO NOT FEEL ARE SUFFICIENT PROTECTION FOR THE CREDIT CUSTOMER AS EVIDENCED BY OUR PROPOSED AMENDMENT THAT WOULD PRECLUDE THE CHARGING OF NEW INCREASED INTEREST RATES ON EXISTING BALANCES OWED.

WE ARE NOT IN BUSINESS TO RIP-OFF THE CONSUMER. THEY ARE OUR CUSTOMERS AND THEY PROVIDE US WITH OUR LIVELYHOOD.

WHY IN A FRUITLESS ATTEMPT TO CONTROL OUT-OF-STATE ENTITIES, SHOULD YOU STAND BY AND WATCH MONTANA'S OWN BUSINESSES SUFFER NEDLESSLY.

PLEASE AMEND AND THEN PASS HOUSE BILL 239.

MONTANA, USUALLY RIGHT IN THE CUSTOMERS HOME TOWN. WHEN A CUSTOMER TALKS TO US, HE ISN'T DEALING WITH A COMPUTER OR JUST AN UNKNOWING, UNFEELING VOICE ON THE OTHER END OF A LONG-DISTANCE TELEPHONE CALL, WE ARE HERE TO STAY, WITH YOUR HELP, WHERE WE WILL FACE THAT CUSTOMER AND HIS FRIENDS EVERY DAY, AT OUR PLACES OF BUSINESS, IN OUR CHURCHES, AND MANY TIMES IN OUR HOMES.

WE CAN NOT AND WILL NOT TAKE UNFAIR ADVANTAGE OF OUR FRIENDS, NEIGHBORS AND CUSTOMERS. WE SPEND A LOT OF MONEY ON CREDIT REPORTS, ETC. TO BE SURE THAT NEITHER THE CUSTOMER OR OURSELVES WILL EVER BE SORRY THAT WE DID BUSINESS TOGETHER.

I APPEAR HERE TODAY TO URGE THIS COMMITTEE, MR. CHAIRMAN, TO AMEND HOUSE BILL 239 BACK TO ITS ORIGINAL INTENT SO IT WILL PROVIDE EQUAL OPPORTUNITY FOR THE RETAILER IN THE OPEN COMPETITIVE MARKETPLACE, AND THEN TO GIVE IT A DO PASS TO THE SENATE BODY AS A WHOLE.

To establish national uniformity, the Federal Reserve Board recently issued new rules regarding notice requirements that cover any change in open-end (revolving) credit plan terms.

Prior to these regulations, rules that governed account term changes varied from state to state.

The new rules apply to all open-end creditors who change terms of their revolving credit plans after March 14, 1981, pre-empt any state law or private contract provisions and modify the notice requirements of Regulation Z of the federal "Truth in Lending" Act.

Under the new rules, any open-end creditor who after March 14, 1981, (1) Imposes or increases any finance or other charge, (2) changes the method of computing the balance upon which the charges are imposed or (3) increases the minimum periodic payment must meet two conditions:

The creditor must mail or deliver a written notice of the change in terms to each open-end account at least 30 days before the effective date of change. (The notice must be on a single document and sent to each account holder, although only one notice is required for each joint account.)

The creditor must permit each account to pay the outstanding balance under the existing account terms, or accept the new terms on both the existing and new balances by use of the account on or after the effective date of the change.

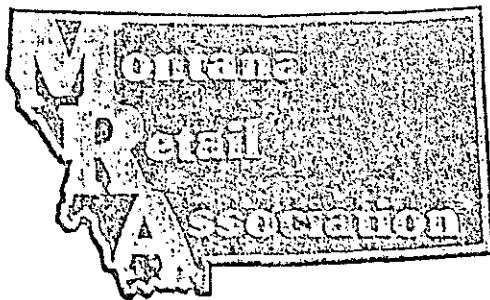
The Federal Reserve suggests language for the notice, and the use of it would insulate a business from any future charge of non-compliance.

It reads as follows: WARNING: Continued use of your account on or after (effective date of change) will result in stricter terms. You have TWO OPTIONS:

- (1) You may stop making charges on your account before (effective date of change) and pay off under the existing terms described in this notice all or any part of what you owe us on that date. You may continue to use your account on

or after that date, but if you do so, the new terms will apply as explained in option (2) below. OR

- (2) You may make charges on your account on or after (effective date of change), in which case the new terms described in this notice will apply to what you then owe us and to future charges.



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The Independent Record, Helena, Mont., Wednesday, February 4, 1981—1B

House would dump usury laws

By GARRY J. MOES
Associated Press Writer

All interest limitations on loans from regulated financial institutions and on retail installment contracts would be wiped out under a bill overwhelmingly endorsed by the Montana House Tuesday.

The sweeping elimination of state usury laws does not apply to revolving charge accounts, including credit cards, or to unregulated commercial small loan companies. It does apply to loans from banks, credit unions, savings and loan associations, government-sponsored lending agencies and retail establishments extending non-revolving credit.

Rep. Jay Fabrega, R-Great Falls, sponsor of both measures, said ceilings on interest have tended to make credit virtually unavailable in certain areas of the economy. He said interest limits on auto loans, for example, were largely responsible for poor car sales and the fact that

some 30 Montana dealers went out of business in recent months.

Fabrega said the time is ripe for allowing the competitive marketplace to control interest rates.

Federal truth-in-lending disclosure requirements include sufficient safeguards to make borrowers aware of interest costs, he argued, adding that where precise dollar disclosures are not well known to consumers—such as with credit cards and retail revolving accounts—the old interest limitations will remain.

The two bills sailed through their first votes in the House with little or no debate. One more House vote is needed on each bill, HB238 and HB239, before they go to the Senate.

Meanwhile, labor won another victory in the conservative House Tuesday when members voted 55-41 to kill a bill to deny unemployment benefits to non-professional school personnel during summer vacation months.

Opponents said the bill would unfairly dis-

criminate against a segment of the working population which is already poorly paid, some being retirees making as little as \$4,000 a year. They said the bill would simply force such workers as janitors, bus drivers, lunch workers and secretaries onto welfare during non-school periods.

Backers of the bill argued that unemployment benefit payments are merely subsidizing summer vacations for these school employees. They said there have been many abuses of the present system, and school districts which must pay for jobless insurance are being victimized.

The bill not have covered such employees who work under written contracts.

The House killed, without discussion, a proposed constitutional amendment which would have limited the number of initiatives which could appear on the ballot.

The bill was sponsored by Rep. Joe Kanduch, D-Anaconda.

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF

HOUSE BILL 239

WITH AMENDMENT

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, FOR THE RECORD MY NAME IS JACK WHIPPLE. I AM THE MANAGER OF THE CHAMBERS-FISHER DEPARTMENT STORE IN BOZEMAN, MONTANA AND WE DO HAVE OUR OWN INTERNAL CONSUMER CREDIT DEPARTMENT.

I WAS VERY INTERESTED AND DELIGHTED WHEN I FOUND THAT HOUSE BILL 239 WAS DRAFTED AND INTRODUCED. I UNDERSTOOD THAT THERE WAS A MUTUAL AGREEMENT OF ALL OF THE COMPONENTS CONCERNED THAT THE TOTALITY WOULD SUPPORT HOUSE BILL 238 & 239 AS AN ANSWER TO MUTUAL CONCERNS.

I WAS LET-DOWN WHEN I READ OF THE AMENDMENT THAT WAS MADE TO HOUSE BILL 239 AND EVEN MORE FLABBERGASTED WHEN I READ OF THE CONCERNS AND/OR REASON THAT SUCH AMENDMENT WAS MADE.

NOT ONLY, HAS SUCH AMENDMENT PLACED THE RETAILER IN A MOST DISADVANTAGEOUS POSITION IN THE MERKETPLACE, IT IS ALSO DISCRIMINATING IN SUCH A WAY THAT IF INDUSTRY ITSELF TOOK ANY ACTIONS OF SIMILAR CONSEQUENCE, THE FEDERAL GOVERNMENT WOULD BE INVESTIGATING AND TAKING LEGAL ACTIONS THROUGH THE FEDERAL TRADE COMMISSION TO PROHIBIT ITS ENFORCEMENT AND CONTINUATION.

THE AMENDMENT WAS SUPOSEDLY MADE TO PROTECT MONTANA CITIZENS AGAINST OUT-OF-STATE CREDIT CARD COMPANIES THAT WOULD TEND TO TAKE ADVANTAGE OF THE SITUATION FOR SELF-ENRICHMENT AT THE COST OF THE CONSUMER.

ATTACHED HERETO, YOU WILL FIND A COPY OF AN ARTICLE FROM

THE LOS ANGELES TIMES, DATED DECEMBER 19, 1978, THAT BACKS UP THE STATEMENT THAT MONTANA CAN NOT CONTROL THE RATES OR AMOUNTS CHARGED BY OUT-OF-STATE CREDIT CARD ISSUERS, DUE, IN PART, TO A UNITED STATES SUPREME COURT DECISION, ISSUED OVER TWO YEARS AGO AND STILL IN FULL FORCE AND EFFECT.

I AM SURE THAT THE INTENTIONS BEHIND SUCH AMENDMENT WERE HONORABLE AND THOUGHT TO BE IN THE BEST INTERESTS OF THE CITIZENS OF MONTANA, BUT, AS YOU CAN SEE, THE ACTUAL EFFECT IS QUITE THE OPPOSITE.

IF ANY ENTITY OR PART OF THE CONSUMER CREDIT GRANTING INDUSTRY IS INTENT ON TAKING ADVANTAGE OF THEIR CARD HOLDERS THEY WILL FIND A LOOP-HOLE OR OTHER WAY TO DO SO REGARDLESS OF WELL INTENTIONED ATTEMPTS AT PROHIBITION. THIS IS CONFIRMED BY THE ATTACHED ARTICLE FROM THE WALL STREET JOURNAL DATED FEBRUARY 4, 1981, WHEREIN YOU WILL NOTE THAT SUCH CIRCUMVENTION HAS OCCURED BEFORE AND IS STILL IN PROCESS NOW.

I STRONGLY SUGGEST AND REQUEST THAT THIS COMMITTEE LOOK VERY CLOSLY AT HOUSE BILL 239 AS IT WAS DRAFTED AND INTRODUCED, LOOK BEYOND THE TECHNICAL LANGUAGE AND TO THE INTENT THEREIN, LOOK AT THE AMENDMENT MADE AND THE TRUE EFFECT IT HAS, AND THEN TAKE THE NECESSARY ACTION TO REPEAL THE EFFECT OF THAT AMENDMENT AND BY SO DOING, TREAT THE RETAILING SEGMENT WITH THE FAIRNESS AND RESPECT IT DESERVES.

THE BEST, AND POSSIBLY ONLY, WAY TO COMBAT ANY ADVERSE ACTIONS BY THE OUT-OF-STATE CREDIT CARD ISSUERS, IS TO ALLOW LOCAL LEGITMENT MONTANA BUSINESS TO COMPETE ON EQUAL FOOTING AND BY SUCH COMPETITION MAKE ALL OUTSIDERS TREAT MONTANANS WITH THE SAME DIGNITY AND RESPECT THAT THEY ARE TREATED BY

THOSE OF US THAT HAVE EARNED THEIR RESPECT BY YEARS OF FAIR
AND SQUARE DEALINGS AND THEREBY HAVE BEEN REWARDED FINANCIALLY
BY THEM AND THEIR CONTINUED SUPPORT.

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, I ASK YOU TO
AMEND HOUSE BILL 239 AS REQUESTED AND MOVE IT TO THE SENATE
FLOOR WITH A UNANIMOUS "DO PASS" RECOMMENDATION.

THANKING YOU FOR YOUR TIME AND
ATTENTION,

Delaware Tries to Lure Out-of-State Banks With Bill to Offer Regulatory, Tax Haven

By JOHN HELYAR
And JULIE SALAMON

Staff Reporters of THE WALL STREET JOURNAL

Delaware is poised to join South Dakota in the ranks of the nation's unlikely banking centers.

The Delaware Senate passed a bill last night that would, among other things, give income tax breaks to banks earning more than \$20 million a year. That, in turn, is expected to attract subsidiaries of money-center banks unhappy with their regulatory and tax treatment elsewhere.

Two New York bank-holding companies, J. P. Morgan & Co. and Chase Manhattan Corp., will be first in line, with Morgan set to transfer some of its commercial banking operations and Chase planning to move some of its credit-card operations, an aide to Delaware Gov. Pierre DuPont said.

Part of Delaware's Financial-Center Development Act was modeled on South Dakota legislation, which resulted in Citicorp planning to move its credit-card operations to South Dakota from New York. Like South Dakota, Delaware wants to eliminate interest rate ceilings and allow banks to charge fees on credit cards.

More important, however, is the proposed income tax structure, which would mean that the bigger the profit the smaller the levy. Banks earning less than \$20 million a year on their Delaware operations would pay an 8.7% tax. That percentage would be scaled down to the point where banks making more than \$30 million would pay 2.7%.

Delaware would become, says secretary of community affairs and economic development Nathan Hayward III, "the Luxembourg of the U.S. for banking and financing."

The state's General Assembly apparently shares his enthusiasm. The bill was introduced Jan. 14 in the House of Representatives and was passed 33-3 on Jan. 22.

Last night, after an eight-hour debate, the bill was voted by the Senate, 14-7, and sent to Gov. DuPont, who is expected to sign it. The outcome was never really in doubt, because the bill had 13 Senate cosponsors.

Focus on Jobs

Their big interest is jobs. Morgan and Chase Manhattan are expected to generate 360 jobs by the end of next year, and that's a healthy number in economically troubled Delaware. Plenty more jobs—from them and other institutions—could be in the offing.

When contrasted with New York's tax rate, the big banks' keen interest is understandable, too. New York City banks pay local taxes at a 13.8% rate and state taxes at 12%. "That's why your friendly bankers are annoyed," says John Morris, a vice president at Morgan Guaranty Trust Co., J. P. Morgan's chief subsidiary.

Morgan and Chase Manhattan weren't just interested bystanders in the Delaware legislation, however. They helped design it, beginning last June in meetings with the DuPont administration. What little opposition there is stems in part from suspicion of this cooperative approach. "Are New York bankers dictating Delaware law now?" asks Sen. David B. McBride, a suburban Wilmington Democrat.

He was planning to offer at least a dozen amendments to modify the legislation. He doesn't expect to get his way, but he would like some more debate on "whether we're opening up some kind of Pandora's box."

So would fellow Democratic Sen. Thomas B. Sharp, the senate majority leader who's willing to stretch debate long into the eve-

ning by going over the 50-plus pages of legislation "line by line, page by page."

"This is a very complex bill, and we only got it a week ago," Sen. Sharp notes. "My concern is what this is doing to the small consumer—what it means for mortgages and credit. There hasn't been time enough to learn its intricacies."

The concern of some state and federal banking authorities is that this could be the start of full-scale tax war between states.

"I hope we don't get into a situation where everyone tries to steal each other's employees," says Muriel Siebert, New York State superintendent of banking. The New York Federal Reserve Bank's president, Anthony M. Solomon, urged bankers last week to think twice before succumbing to the lure of Delaware or other seeming havens. "The large New York money-center banks must surely appreciate that they draw their basic strength from being active participants in this market," he said.

Even consumer activist Ralph Nader has jumped into the fray, in a letter to the Delaware senate president pro tempore, Sen. Richard S. Cordrey. Warned Mr. Nader: "At a time when it is critical for many of the nation's older central cities to make large-scale social and economic infrastructure investments, it would be unwise to trigger bank-tax-reduction war between the

states."

Nonsense, sniffs Delaware Gov. DuPont. "America has been built on a competitive system, and I think this is an acceptable form of competition," he says. The governor is out to diversify the state's economy, which has long been tied to the chemical industry's swings. Luring banks is logical, according to the patrician Republican: "It's a growth industry, it's nonpolluting, and it pays good wages."

Besides, notes Gov. DuPont, the new Delaware banking rules are aimed only at a limited number of players. Under the House-passed version, incoming banks must commit themselves to having \$25 million capital and at least 100 employees by the end of their first year. That restricts the field pretty much to large banks (which aren't meant by this legislation to get into retail competition with the Delaware banks).

Jerseyans Watch Delaware

Nonetheless, some smaller banks also have a keen eye out for the senate's action. "We have a distinct interest in Delaware," concedes James D. Lowry, chairman of Bancshares of New Jersey. The income tax break could provide healthy working conditions for the investment and investment advisory services of this \$1 billion-assets bank holding company. But, notes Mr. Lowry, unless the law is amended to allow lower capi-

tal levels, the Moorestown, N.J., institution would have to set up shop in conjunction with other banks, pooling resources.

First Maryland Bancorp., Maryland's second largest bank holding company, also may be interested in Delaware. The Maryland senate is likely to approve this week the final reading of a bill that would ban banks from charging credit card membership fees. At a hearing on that bill William Weaver, executive vice president of the Maryland Bankers Association, said First credit-card operations to its northern neighbor. First Maryland officials failed to return phone calls seeking elaboration.

The Philadelphia Federal Reserve Bank hasn't received any applications or had any questions from area banks seeking a beachhead in Delaware, says Thomas K. Desch, bank supervision vice president. But then, he adds, the region's banks may be less concerned with moving operations than with pressing their state legislators for breaks similar to Delaware's.

Federal Banks Win Key Test on Usury Law

Homes State Rates on
Credit Cards Apply
Elsewhere, Court Rules

BY JIM MANN

Times Staff Writer

WASHINGTON—The Supreme Court ruled unanimously Monday that a state has no authority over the interest rates charged credit-card holders by an out-of-state national bank.

The ruling means that a customer of an out-of-state bank may be charged rates of 18% a year or more on the unpaid balances of credit card accounts—even if usury laws within the card-holder's state limit interest rates to a maximum of 12%.

Rejecting protests that a national bank should be forced to obey each individual state's usury laws, the high court decided that federal banking law gives a national bank the right to charge credit card customers whatever interest rate is permitted in the state where it is chartered.

The ruling came in a case in which Minnesota, which limits interest rates to no more than 1% per month, sought to stop the First National Bank of Omaha from charging its BankAmericard customers in Minnesota rates of 1½% per month. The Omaha bank is chartered in Nebras-

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF HOUSE BILL 239 WITH AMENDMENT

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, FOR THE RECORD MY NAME IS GREG ALLEN. I AM THE OWNEP AND OPERATOR OF BY GEORGE'S IN HELENA, MONTANA. BY GEORGE'S IS A MENSWEAR STORE WHICH WAS STARTED BY MY FATHER GEORGE ALLEN WHO STILL RUNS SHELIA'S SMART APPERAL, A WOMEN'S WEAR STROE HERE IN HELENA. BOTH OF THE STORES HAVE THEIR OWN REVOLVING CREDIT ACCOUNT PLANS FOR OUR CUSTOMERS.

I AM HERE TODAY IN SUPPORT OF HOUSE BILL 239 AS IT WAS ORIGINALLY INTRODUCED, DRAFTED AND AGREED UPON PRIOR TO THE START OF THIS SESSION.

HOUSE BILL 239 WAS AMENDED IN THE HOUSE BUSINESS AND INDUSTRY COMMITTEE AFTER EXTENSIVE TESTIMONY WAS RECEIVED BY THAT BODY IN HEARING. THERE WAS NO TESTIMONY HEARD THAT URGED OR HINTED AT A NEED TO RESTRICT THIS BILL BY AMENDMENT AS IT WAS.

THE AMENDMENT OF HOUSE BILL 239 AND ITS PASSAGE OUT OF COMMITTEE AND FROM THE HOUSE TO THIS SENATE COMMITTEE, TOGETHER WITH SIMILAR MOVEMENT OF COMPANION LEGISLATION, HAS PLACED THE RETAILER AT A SEVERE DISADVANTAGE IN THE OPEN COMPETITIVE MARKETPLACE. ALL INTEREST RATE CEILINGS HAVE BEEN REMOVED FROM OTHER SEGIMENTS OF THE INDUSTRY AND HAVE LEFT THOSE OF US WITH OPEN-END, CONSUMER CREDIT TO ATTEMPT TO COMPETE WHEN WE ARE STRADDLED WITH AN 18% MAXIMUM INTEREST RATE.

THE AMENDMENT THAT DID THIS TO US WAS OFFERED AND AGREED ON IN EXECUTIVE SESSION BY THAT COMMITTEE WHERE THERE WAS NO MEANS OF REFUTING IT OR EVEN OFFERING ANY RESPONSE OR OTHER

ALTERNATIVES THAT COULD BE CONSIDERED.

THE CONCERN THAT PROMPTED THE AMENDMENT WAS AN HONEST CONCERN AND WAS TWOFOLD,

1) THERE WAS A CONCERN THAT A CUSTOMER WITH A LARGE BALANCE IN THEIR REVOLVING ACCOUNT AT PRESENT, WOULD NOT HAVE SUFFICIENT LIQUID ASSETS TO PAY OFF THE ACCOUNT AND THAT THE RETAILER WOULD INCREASE THE INTEREST RATES BURDENING THAT CONSUMER WITH HIGHER MONTHLY PAYMENTS AND INTEREST COSTS. THIS HAS, OF COURSE, BEEN ANSWERED AND THAT CONCERN HAS BEEN ELIMINATED BY THE AMENDMENT YOU JUST HEARD OFFERED TO THIS COMMITTEE BY MR. HANSEN.

2) THERE WAS A CONCERN EXPRESSED THAT THE CONSUMER DOES NOT HAVE THE SAME PROTECTION OFFERED IN OPEN-END CREDIT THAT HE DOES IN CLOSED-END CREDIT, BY THE FEDERAL TRUTH-IN-LENDING DISCLOSURE REQUIREMENT THAT THE DOLLAR AMOUNT OF INTEREST FOR THE ENTIRE TERM OF THE CONTRACT BE DISCLOSED.

AS YOU WILL NOTE FROM THE TESTIMONY OF MR. HANSEN AND THE EXHIBITS ATTACHED TO HIS TESTIMONY, RETAILERS WOULD BE MORE THAN HAPPY TO MAKE THIS DISCLOSURE. HOWEVER, WHEN TRUTH-IN-LENDING WAS INITIATED, IT WAS RECOGNISED THAT THE CONSUMER WAS OR WOULD BE MORE INCLINED TO OVER SPEND ON CREDIT WITH SUCH A DISCLOSURE THAN THEY ARE WITHOUT IT. THE PEOPLE WHO INITIATED TRUTH-IN-LENDING FELT THAT SUCH DISCLOSURE WOULD BE "COUNTER PRODUCTIVE" TO THEIR INTENT.

NOW I WOULD LIKE TO EXPLAIN WHY WE NEED TO BE INCLUDED IN HOUSE BILL 239.

IT MIGHT BE TRUE THAT SOMETIME IN THE FUTURE WE WILL INCREASE OUR INTEREST RATES IF ALLOWED TO DO SO. HOWEVER, BE

ASSURED THAT SUCH A MOVE WILL NOT EVEN BE ANTICIPATED UNTIL IT IS ABSOLUTELY NECESSARY. WE DO NOT WANT TO BE IN THE FINANCE BUSINESS IN THE FIRST PLACE, WE DO SO ONLY TO BE COMPETITIVE. TO ARBITRARILY INCREASE INTEREST RATES WOULD MAKE US LOSE ANY COMPETITIVE POSITION WE WOULD HAVE HAD AND WOULD MOST CERTAINLY BE AGAINST OUR OWN BEST INTERESTS.

IT MOST CERTAINLY APPEARS THAT INTEREST RATE CEILINGS WILL BE REMOVED FROM OTHER SEGMENTS OF OUR INDUSTRY, INCLUDING "REGULATED LENDERS". VERY FEW RETAILERS HAVE SUFFICIENT CAPITAL TO ENTIRELY FINANCE THEIR OWN REVOLVING CHARGES OR OTHER CONSUMER CREDIT PROGRAMS. WE MUST BORROW THE MONEY NECESSARY FROM OTHER LENDERS AND IN MOST CASES FROM THE BANKS WHERE WE DO BUSINESS. INTEREST RATE CEILING REMOVAL WILL ALLOW THE FREE ENTERPRISE SYSTEM TO WORK, AND IT WILL WORK IF ALL SEGMENTS ARE GIVEN EQUAL ADVANTAGE TO MAKE IT WORK. LOANS WILL BE NEGOTIATED AS THEY NEVER HAVE BEFORE IN OUR LIFETIMES. PLACE YOURSELF IN A RETAILERS POSITION WHEN HE GOES IN TO NEGOTIATE A LOAN TO HANDLE HIS CONSUMER LOAN BUSINESS. HE IS GOING TO TRY TO CONVINCE THE BANKER TO LEND HIM MONEY THAT HE IS GOING TO USE TO OPERATE HIS CONSUMER CREDIT AND HE CAN ONLY HOPE FOR A MAXIMUM 18% RETURN ON HIS MONEY GROSS. HOW WOULD YOU APPROACH THE PROBLEM OF CONVINCING YOUR BANKER THAT HE SHOULD LEND YOU THE MONEY AND THAT THERE WAS ANY CHANCE THAT YOU WERE GOING TO BE SUCCESSFUL AND BE ABLE TO REPAY HIM WHEN THE TIME CAME AND THE LOAN WAS DUE? WITHOUT BEING STIFFLED BY AN 18% MAXIMUM CEILING WE WOULD AT LEAST BE IN A POSITION TO BE ABLE TO SHOW THAT IF IT BECAME ABSOLUTELY NECESSARY WE COULD ADJUST OUR RATES SO THAT WE COULD RECOVER OUR BARE COSTS. WE WOULD NO LONGER

HAVE TO RELY ON THE COMPLEX ARGUMENT AND EXPLANATION THAT THE INCREASED SALES WOULD INCREASE OUR VOLUME OF BUSINESS, WOULD INCREASE OUR BUYING POWER, WOULD INCREASE OUR MARKUP AND OUR COMPETIVENESS, WOULD IMPROVE OUR PROFITS, WOULD INCREASE OUR ABILITIES TO REPAY THE LOAN, AND ALL OF THIS BECAUSE HIS LOAN WOULD ALLOW US TO OFFER OUR CUSTOMERS A TIME PAYMENT PURCHASE PLAN AND MAKE US COMPETITIVE WITH OTHER RETAILERS.

MR. CHAIRMAN, MEMBERS OF THIS COMMITTEE FOR ME TO GO ON WOULD BE REDUNDANT AND REPEATING MANY THINGS YOU HAVE ALREADY HEARD AND WILL HEAR AGAIN.

I AM SURE THAT YOU CAN ALL SEE WHY IT WOULD BE UNFAIR TO ALLOW THE RETAIL INDUSTRY TO BE DISCRIMINATED AGAINST AND PRAY THAT YOU WILL AMEND HOUSE BILL 239 AS REQUESTED BY US TODAY AND FORWARD IT TO THE FLOOR OF THE SENATE WITH A UNANIMOUS "DO PASS" RECOMMENDATION.

THANK YOU FOR YOUR TIME AND ATTENTION,

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF - - - HOUSE BILL 239 - - - WITH AMENDMENT

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, FOR THE RECORD MY NAME IS LUCILLE ~~RAY~~ ~~PRAY~~. I AM THE CREDIT MANAGER FOR THE HART-ALBIN STORES OF MONTANA.

RETAILING IS NOT AN EASY BUSINESS, TO BE EVEN MODERATELY SUCCESSFUL ONE MUST HAVE EXPERTISE IN MANY AREAS, SUCH AS: BOOKEEPING, INVENTORY CONTROL, PURCHASING, SELLING, MARKUPS, MARKDOWNS, MARGINS, MANAGEMENT, PERSONNEL, ACCOUNTING, SHIPPING AND RECEIVING, FREIGHT RATES, TAXATION, LABOR RELATIONS, ETC., ETC., ETC..

THE LARGER ONE BECOMES IN BUSINESS THE EASIER ALL OF THOSE TASKS BECOME, BECAUSE THEN THE BUSINESS CAN AFFORD TO HIRE PEOPLE TO ASSIST IN SOME, MANY, OR EVEN EACH OF THESE AREAS.

AS THE BUSINESS GROWS SO DO THE OPPORTUNITIES TO EXPAND INTO OTHER AREAS. SUCH EXPANSION RENEWS THE SAME GROWING PAINS AS WHEN THE BUSINESS WAS SMALLER (THE NEED FOR EXPERTISE IN MANY NEW AREAS) AND AGAIN GROWTH ALLOWS HIRING OF PEOPLE WITH THE ABILITIES NEEDED.

IT SEEMS LIKE WE ARE ALWAYS WITHIN THE AREA OF BEING TO BIG TO STAY WHERE WE ARE AND TO LITTLE TO BE ABLE TO AFFORD THE HELP WE NEED.

THAT IS WHERE WE, MOST OF THE RETAILERS IN MONTANA, FIND OURSELVES AT THIS TIME.

TO MEET OUR COMPETITION WE HAVE HAD TO EXPAND INTO THE AREAS OF OFFERING CONSUMER CREDIT TO OUR CUSTOMERS SO THAT

THEY CAN PURCHASE OUR MERCHANDISE THROUGH TIME PAYMENTS. THIS WAS A NATURAL AND LOGICAL STEP. DUE TO INFLATION AND ALL OTHER ECONOMIC CONDITIONS, IT HAS BECOME MORE AND MORE DIFFICULT FOR OUR CUSTOMERS TO MAKE MAJOR PURCHASES FOR CASH ON DELIVERY.

WE HAVE ENTERED INTO THIS NEW AREA WITHOUT THE ABILITY, AT THIS TIME, TO HIRE THOSE WITH THE EXPERTISE NEEDED TO PROVIDE THE GUIDANCE TO ASSURE SUCCESS. WE ARE ALL FAIRLY NEW AT THIS PART OF THE BUSINESS AND ARE COMPETING WITH THOSE WHO ARE MUCH MORE EXPERIENCED AND FINANCIALLY MUST BETTER TO HANDLE IT THAN WE ARE. HOWEVER, WE HAVE BEEN IN THIS POSITION MANY TIMES BEFORE AND BECAUSE OF THE ADVANTAGES WE HAVE IN BEING HOME OWNED AND OPERATED, THEREBY MUCH CLOSER TO OUR CUSTOMERS, WE HAVE SUCCEEDED.

WE HAVE BORROWED ON OUR INVENTORIES, FURNITURE, FIXTURES, EQUIPMENT AND ON OUR GOOD NAMES AND REPUTATIONS, SO THAT WE COULD OBTAIN THE MONEY TO FINANCE OUR CONSUMER CREDIT PROGRAMS.

THOSE THAT WE EXTEND CREDIT TO ARE SCREENED VERY CAREFULLY. WE CAN NOT AFFORD TO ALLOW ANYONE TO GET INTO DEBT SO FAR THAT THEY CAN NOT MAKE THEIR PAYMENTS BECAUSE IF WE DID, WE WOULD NOT ONLY LOSE THE MONEY WE HAVE EXTENDED IN CREDIT, BUT WOULD LOSE THE COST OF AND PROFIT ON THE MERCHANDISE WE SOLD AS WELL AND EVEN MORE THAN THAT WE WOULD LOSE A CUSTOMER.

I WAS BOTHERED WHEN I READ IN THE NEWSPAPERS OF THIS STATE ABOUT THE ACTIONS TAKEN IN THE HOUSE BUSINESS AND INDUSTRY COMMITTEE. THIS ACTION NOT ONLY HURT US AS RETAILERS IN MONTANA BUT HINTED AT IMPROPRIETIES BY MONTANA'S RETAILING COMMUNITY.

WE HAVE NOT AND WOULD NOT TAKE ADVANTAGE OF OUR CUSTOMERS,

IF WE DID WE WOULDN'T CONTINUE TO BE IN BUSINESS LONG ENOUGH TO PULL THE SHADES BEFORE WE HAD TO CLOSE OUR DOORS.

THIS IS NOT NECESSARILY TRUE OF SOME OF THOSE THAT EXTEND CREDIT. AS YOU CAN SEE FROM THE ATTACHED LETTER DIRECTED TO CREDIT CUSTOMERS FROM CITIBANK MasterCard, THEY HAVE INCREASED THEIR INTEREST RATES FROM 13% TO 19.8 %, RAISED THEIR ANNUAL MEMBERSHIP FEE TO \$15.00 A YEAR AND HAVE INCREASED THEIR MINIMUM PAYMENT REQUIREMENTS. PLEASE NOTE WITH PARTICULAR INTEREST THAT THE PRESIDENT OF CITICORP CREDIT SERVICES, INC. STATES "WE ARE ALSO MAKING SOME CHANGES, AND, AT THE SAME TIME, MAKING YOUR CITIBANK CARD MORE VALUABLE." THEY MADE THE CARD "MORE VALUABLE" BY INCREASING THE CREDIT CEILING ALLOWED INDISCRIMINATELY. IT IS ACTIONS OF THIS TYPE THAT WILL TAKE ADVANTAGE OF CONSUMER CREDIT CUSTOMERS AND CAUSE ADVERSE REACTIONS THROUGHOUT THE COUNTRY.

THE AMENDMENT THAT WAS PLACED ON HOUSE BILL 239 DOES NOTHING TO PROHIBIT THIS TYPE OF ACTIONS. IT DOES PLACE US, THE LEGITIMATE MONTANA RETAILERS, AT A SEVERE DISADVANTAGE WHICH COULD VERY EASILY MAKE US GET OUT OF THE CONSUMER FINANCE BUSINESS - - JUST LIKE K-MART DID - - AND RELY ON CONSUMER CREDIT FOR OUR CUSTOMERS AS PROVIDED BY THESE BANK CARDS. THAT AMENDMENT WILL ONLY TEND TO FURTHER THE ABUSES ON THE CREDIT CONSUMER THAT IT WAS DESIGNED TO PROTECT.

GENTLEMEN, AND SENATOR REGAN, PLEASE GIVE YOUR FULL ATTENTION AND COMPLETE CONSIDERATION TO THE TESTIMONY YOU HAVE HEARD THIS DAY. AMEND HOUSE BILL 239 TO PROVIDE EQUAL ADVANTAGES FOR THE RETAILERS, AND GIVE IT YOUR "DO PASS" APPROVAL.

THANK YOU.



Citibank MasterCard™
P.O. Box 276
Melville, New York 11750

M25-CL

December, 1980

Dear Cardmember:

You may be aware that banks across the country are changing the way they charge cardmembers. This is because wages, general operating expenses, and the cost of funds have risen considerably over the last several years. To solve these cost problems, banks are taking steps like increasing interest rates, charging annual fees, and making other changes.

We are also making some changes, and, at the same time, making your Citibank card more valuable.

1. To meet our costs, we are adjusting our interest rate to 19.8%, charging an annual membership fee of 15 dollars, and revising the minimum payment. These are explained in the enclosed notice.
2. To make our card more valuable to you, we are increasing your credit line by \$550. You have earned this extra available credit because of the responsible way you have handled your account with us. Your new credit line will give you the continuing convenience of ample available credit.

If for any reason you do not wish to have your credit increased at this time, please call us toll-free, Monday through Friday, 9AM to 6PM.

Sincerely,

Richard C. Kane
President
Citicorp Credit Services, Inc.

Customer Service Numbers:

From New York City (212) 895-4320 From Long Island (516) 752-8808
From New York State (not NYC) Toll Free (800) 732-9102
Toll Free From All Other Areas: (800) 645-9560

NOTICE TO CARDMEMBERS

Wages, general operating expenses, and cost of funds have risen rapidly over the last several years, and now make it impossible for banks to continue to offer cards and extend credit under existing conditions.

Therefore we are making certain adjustments to how we charge you. These changes will become effective January 19, 1981. We are sorry they are necessary and realize they will cause some inconvenience. You can compare the new terms to the existing terms which are described on the back of this notice.

Most of these changes will not affect you if you pay your bill in full each month.

Starting January 19, 1981, the Annual Percentage Rate on purchases and advances you wish to finance will be 19.8%. This change does not apply to your existing balance, nor to any purchases and advances made before January 19, 1981.

We are adding a \$15 annual membership fee. On your first billing statement after January 19, 1981 which contains a new charge, you will see an anniversary date for this annual fee. That statement will also contain the charge for the pro-rated portion of the membership fee up to the anniversary date. After that, the full annual fee will be billed on your anniversary date.

The minimum payment on purchases is being changed. Effective January 19, the minimum payment will be 20 dollars for purchase balances below 720 dollars. Each time your total purchase balance exceeds 720 dollars, your minimum payment will be 1/36 of your new highest billed balance, rounded to the next dollar.

Enclosed is a new Retail Installment Credit Agreement which we have revised to show these changes. You can agree to its terms by continuing to use your card, or permitting a person authorized by you to use your card, on or after January 19, 1981. If you decide not to use your card on or after January 19, 1981, none of these changes apply to your account. If you have any questions, please call us toll-free, Monday through Friday, 9 AM to 6 PM.

You are an important customer to us, and we want to continue to provide you with the convenience and availability of your Citibank MasterCard™ card.

Customer Service Numbers

From New York City (212) 895-4320 From Long Island (516) 752-8808

From New York State (not NYC) Toll Free (800) 732-9102

Toll Free From All Other Areas: (800) 645-9560

For your convenience, listed below are the old terms on your account.

Minimum Payment For unpaid purchase balances, the minimum payment is 1/36 of your "New Balance" for purchases, but at least 5 dollars.

Finance Charge On Purchases The Annual Percentage Rate on purchases is as follows:

Address Of Account Holder	Monthly Periodic Rate on Balance Subject to Finance Charge	Corresponding Annual Percentage Rate
New York & All Others	1-1/2% First \$500 1% excess over \$500	18% 12%
Missouri	1-1/2% First \$500 5/6% excess over \$500	18% 10%
Arizona	1-1/3% on entire balance	16%
Connecticut, Idaho, Pennsylvania	1-1/4% on entire balance	15%
New Jersey	1-1/4% First \$700 1% excess over \$700	15% 12%
Oregon	1-1/4% First \$500 5/6% excess over \$500	15% 10%
Minnesota, Washington	1% on entire balance	12%
Arkansas	5/6% on entire balance	10%

Finance Charge On Cash Advances The Annual Percentage Rate on advances is as follows:

Address Of Account Holder	Daily Periodic Rate	Corresponding Annual Percentage Rate
New York & All Others	0.03287%	12%
District of Columbia	0.03151%	11-1/2%
Nebraska	0.03014%	11%
Arkansas, Tennessee	0.02740%	10%

Annual Membership Fee Currently, there is no annual membership fee.



RE: H.B. 286, Information
March 3, 1981

To: Legislative Committee Members,

This bill would authorize State Chartered Savings and Loans with the approval of the Montana Department of Business Regulation to be allowed the rights, privileges and duties given to Federal Institutions by Federal Law. The Federal Charter Savings and Loans retain rights and privileges not given uninsured State institutions by virtue of their membership in the Federal Home Loan Bank and the Federal Mortgage Corporation. They are able to borrow money from the Federal Home Loan Bank, sell mortgages to the Mortgage Corporation, insure savings accounts and many other advantages.

H.B. 286 as originally proposed would provide limited new lending powers as given in the Federal Public Law 96-221 - cited as the Depository Institutions Deregulation and Monetary Control Act of 1980. Please see Exhibit A which is a partial list of the additional lending and other powers given by the Federal Law as compared to present State Law limitations.

H.B. 286 as amended does nothing for the only uninsured State Savings and Loan. The one institution in Kalispell that is also State Chartered is FSLIC insured and as an insured institution already has the power to do everything in the way of lending powers and NOW accounts, plus most other Federal Charter powers. The bill with the amendment attached affects practically nothing. It is absolutely necessary for our institution to be able to offer our customers an opportunity to borrow monies on an equal basis as any other Savings and Loan or other financial institution. We are not competitive in the lending field. The two Federal Savings and Loans in Great Falls that would be competitively affected by this bill do not oppose this bill for our institution.

Our institution, Fidelity Savings and Loan, has been in business since 1923. We have paid regular dividends and have been profitable for over 50 years. Please examine the enclosed State of our Financial Condition for 1980. We feel our growth indicates a good consumer response to us as an uninsured State Charter Savings and Loan. I feel it necessary to request your kind consideration in removing the amendment and passing the bill as originally written.

Sincerely,

John D. Buchanan

President

Fidelity Savings and Loan Association

EXHIBIT A

Lending and other powers given by the Federal Law 96-221 as compared to present Montana State Law limitations. A partial List.

<u>1980 FEDERAL LAW</u>	<u>PRESENT STATE LIMITATIONS</u>
90% on improved Real Estate.	75% on improved Real Estate.
66 2/3% in unimproved Real Estate.	Not Allowed.
75% on improved lots and sub-divisions.	Not Allowed.
Home improvement loans.	Not Allowed.
Loans to Financial Institutions, Brokers and Dealers.	Not Allowed.
Commercial Real Estate, 20% of assets.	75 %.
Consumer Loans, 20% of assets.	Not Allowed.
Educational Loans, 5% of assets.	Not Allowed.
Community Development Investments, 5% of assets.	Not Allowed.
Pay dividends daily.	Pay dividends semi-annually.
Branch Offices.	Not Allowed.
Trust Powers.	Not Allowed.
NOW Accounts.	Not Allowed.

Source: Montana Code Annotated, 1978, PP. 66 to 87. Public Law 96-221, 96th. Congress, March 31, 1980.

FIDELITY SAVINGS AND LOAN ASSOCIATION STATEMENT OF CONDITION

December 31, 1980

Statement of Condition

ASSETS

Cash	\$ 94,668
Time deposits	880,000
Investments	85,000
Loans receivable	796,760
Furniture, fixtures and equipment	24,345
Accrued interest receivable	7,347
Income tax refund receivable	1,275
Prepaid expense	1,130
Total	<u>\$1,890,525</u>

LIABILITIES AND RETAINED EARNINGS

Savings deposits	\$1,042,784
Time savings certificates	745,699
Escrow accounts	51,685
Accrued payroll taxes payable	855
Income taxes payable	354
Accounts payable	11,838
Deferred income taxes	2,061
Total liabilities	<u>\$1,855,276</u>
Retained earnings	35,249
Total	<u>\$1,890,525</u>



526—FIRST AVENUE NORTH
GREAT FALLS, MONTANA
453-0387

Fidelity Savings & Loan is audited each year by the
State of Montana Examiners. Fidelity Savings & Loan
was also audited in January 1981 by
Junkermeir, Clark, Campanella, Stevens, PC.

MONTANA CORPORATION

SERVING YOU
SINCE
1923

"THE YEAR OF 1980"

Fidelity Savings & Loan continued to pay their savers the high rate of 7.25% on their regular passbook savings account. Savings grew \$1,350,000 during the year and now total \$1,788,482.

New first mortgage real estate loans grew \$703,033 and now total \$776,906. Assets increased by 346% to \$1,890,525.

FIDELITY SAVINGS & LOAN IS GROWING TO MEET YOUR NEEDS

December 1979\$547,364
December 1980.....\$1,890,525

SERVICES AVAILABLE:

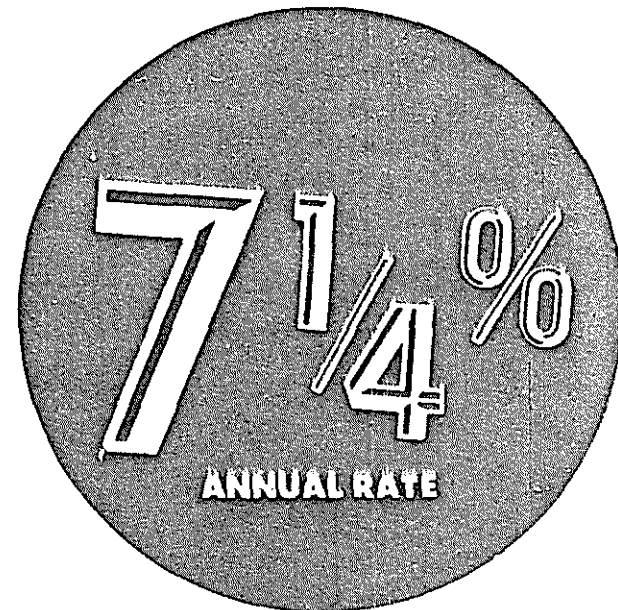
7.25% Regular Passbook Savings
Christmas Club Accounts
Savings Certificates
Money Orders
Travelers Cheques
FHA, VA & Conventional Home Loans
Save-By-Mail
Friendly & Personal Service

OFFICERS AND STAFF

John D. Buchanan President
Sheila F. Buchanan Sr. Vice President
and Managing Officer
Cheryl L. Pygott Vice President
and Managing Officer
Ronald M. Reichelt Secretary of the
Corporation
Shelley A. Bloomdahl Teller/Bookkeeper

DIRECTORS

John D. Buchanan
Ronald M. Reichelt
Sheila F. Buchanan
Delano F. Voegele
John R. Skees
William B. Lewis
Kenneth R. Neill



REGULAR PASSBOOK SAVINGS

- \$10.00 Minimum
- Add to anytime
- Withdraw from
no penalties

Geographic Restrictions on Commercial Banking in the United States

The Report of the President

Department of the Treasury
January 1981

I. Introduction

The United States' financial system, which today encompasses 42,000 depository institutions including almost 15,000 commercial banks, has long been distinctive for its fragmented structure. That fragmentation is a product of neither historic accident nor unencumbered market forces; rather, today's balkanized financial system is largely a result of deeply held beliefs which have been codified in Federal policy. Specifically, our diverse financial system reflects a Federal statutory framework which limits the functions of different classes of depository institutions and defers to the states on the issue of geographic expansion by banks. That framework, in turn, is an outgrowth of long-standing fear of an undue concentration of financial power in the hands of banking institutions. That is, the statutory framework that separates one class of depository institution from another, and that proscribes bank mergers and acquisitions across certain geographic boundaries, makes it more difficult for one class of institution, or for certain institutions within any class, to achieve a dominant market position.

This Administration is committed to the avoidance of an undue concentration of resources and supports the continuation of a viable dual banking system. The issue treated in this report is whether the existing framework of geographic restrictions on bank expansion is an effective, efficient and equitable way to avoid undue concentration in the financial environment of the 1980s. Put another way, given that existing geographic restraints can impede competition and reduce efficiency in many markets, could undue concentrations of financial power be avoided without such restraints? The Administration has concluded that market forces inside and outside banking per se are diminishing the effectiveness and increasing the inequities and inefficiencies produced by current geographic limitations, that the persistence of those forces will create growing pressure for change in the statutory framework in the early 1980s, and that a phased liberalization of existing restraints would serve the public interest.

Fundamental changes in today's statutory structure will not be easily achieved. Despite the increasing ineffectiveness of prohibitions on interstate banking, state boundaries on bank expansion have attained an almost mystical significance among many supporters of the present system. Existing law provides a protective umbrella, albeit an increasingly perforated one, for many institutions, and modification of that law could significantly alter existing competitive relationships. Yet the Administration views the burgeoning debate on these issues as desirable and an intensification of that debate as inevitable.

The debate is desirable because the national interest is served by a stable, strong and competitive commercial banking system, and achievement of the industry's potential to serve the public as efficient financial intermediaries will increasingly be impeded by existing geographic restraints. The Administration cannot justify on grounds of logic or economics the prohibition, on one side of a state border, of the bank's activities which are permissible on the other side of the border. Financial markets have experienced fundamental and accelerating change; businesses, households, and the financial institutions serving their needs have expanded their geographic reach; but the basic Federal statutory approach toward geographic expansion by banks has been virtually unaltered for nearly half a century. Whatever their benefits in an earlier era, the Administration regards existing geographic limitations as anachronistic in the competitive marketplace of the 1980s. The gap between the powers of commercial banks and the geographic breadth of today's financial services markets is growing, and as it grows the inefficiencies and inequities for both banks and the public they serve will become more severe.

The financial services industry is inherently an interstate business, and banking activities on the wholesale side are increasingly conducted on an interstate basis. Today, the nation's major corporations and wealthy individuals frequently effect transactions with banks across state lines; it is only the small business and household customers who continue to be deprived of the benefits of a competitive interstate banking system. In the Administration's view, the failure to liberalize the present framework will perpetuate the existing discrimination against the retail customer, deprive the public of the benefits of increased competition, impede the efficient allocation of resources, retard the development and application of new technologies, and restrict the ability of bank management to compete with other, nonbank financial institutions playing under a different set of rules.

Intensification of the debate is inevitable because market forces will continue to undermine the effectiveness of artificial boundaries unrelated to those forces. Changes in the financial services markets already have substantially altered the character of the banking business. The financial system which emerged from the statutory and regulatory reforms initiated in the 1930s, and which evolved slowly through the next three decades, consisted of distinct kinds of financial institutions, offering distinct financial products, generally in limited geographic areas. Although an important role for specialized institutions continues, changes in demographics, technology, consumer preferences, regulation and the financial industry itself have eroded many of the barriers erected in the 1930s. What was once a financial system consisting of highly segmented geographic markets has, for many kinds of banking services, been transformed into a competitive nationwide marketplace. What was once a segmented product market has been replaced by head-to-head competition between banks and various nonbank institutions; indeed, there is no longer a single service or product line offered exclusively by commercial banks.

Amendments to HB 239

1. Page 4, lines 6 through 10.

Following: "LAW"

Strike: remainder of line 6 through "THEREUNDER" on line 10.

Insert: "the finance charge included in a retail charge account agreement shall be at a rate agreed upon by the retail seller and the buyer."

2. Page 4, line 10.

Following: "CHARGE"

Strike: "MAY"

Insert: "shall"

3. Page 4, lines 12 through 18.

Following: "BY"

Strike: remainder of line 12 through "(B)" on line 18

Insert: "using"

4. Page 4, line 20 through line 3 on page 5.

Following: "CYCLE"

Strike: remainder of line 20 through line 3 on page 5.

Insert: ". (a) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(b) If the retail seller increases his finance charge on a retail charge account agreement, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(c) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full."

5. Page 6, line 11.

Following: line 10

Insert: "Section 3. Merchant finance. A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits."

Renumber: subsequent sections

6. Page 6, line 11.

Following: "DATE"

Insert: " -- Termination"

7. Page 6, line 12.

Following: "APPROVAL"

Insert: "and terminates on July 1, 1983"

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 7, - 1981

An executive meeting was called to order at 11 a.m. in room 404 of the Capitol Building on Saturday, March 7, by Chairman Frank Hazelbaker.

All members were present with the exception of Senator Dover, who was excused.

HOUSE BILL NO. 238:

There was general discussion about the amendments presented.

Senator Regan said she felt there should be a termination date. Senator Goodover said they could sunset two years from the session. Senator Lee felt they should make it 1985 to allow more time. "I don't think two years will be enough." Senator Kolstad commented that they would certainly take a look at it in two years.

SENATOR BLAYLOCK: I move the amendments.

The motion carried with a roll call vote, Senators Goodover and Lee voting no. Senator Dover was excused.

SENATOR BLAYLOCK moved the bill be concurred in as amended. The motion carried with Senators Boylan and Regan voting no. Senator Dover was excused and did not vote.

SENATOR GOODOVER WILL CARRY ON THE SENATE FLOOR.

HOUSE BILL NO. 239:

Greg Petesch, attorney for the committee, explained the amendments. Discussion followed about the usury and who was covered. Discussion about the discount rate. Discussion whether doctors and dentists would be covered. Several questions were asked of Mr. Kirk, a proponent of the bill. In answer to one question he said that 1 1/2 % was now being charged by the merchants and that that was illegal. He then stated that HB 625 would make this legal for merchants to do this.

SENATOR REGAN moved the amendments. The motion carried with the vote unanimous. Senator Dover was excused.

SENATOR GOODOVER moved the bill as amended be concurred in. The motion carried with Senator Boylan voting no. Senator Dover was excused.

SENATOR GOODOVER WILL CARRY ON THE SENATE FLOOR.

STANDING COMMITTEE REPORT

March 7, 1981

MR. PRESIDENT:

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 239

Fabrega (Senator Goodover)

Respectfully report as follows: That HOUSE Bill No. 239

third reading (blue), be amended as follows:

1. Title, line 8.

Following: "DATE"

Insert: "AND TERMINATION DATE"

2. Page 4, lines 6 through 10.

Following: "LAW"

Strike: remainder of line 6 through "THEREUNDER" on line 10.

Insert: "the finance charge included in a retail charge account agreement shall be at a rate agreed upon by the retail seller and the buyer"

3. Page 4, line 10.

Following: "CHARGE"

Strike: "MAY"

Insert: "shall"

XXXXXX
DO PASS

(Continued)

A. Q.

HOUSE BILL 239
Page 2

4. Page 4, lines 12 through 13.

Following: "BY"

Strike: remainder of line 12 through "(B)" on line 13.

Insert: "using"

5. Page 4, line 20 through line 3 on page 5.

Following: "CYCLE"

Strike: remainder of line 20 through line 3 on page 5.

Insert: ". (a) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(b) If the retail seller increases his finance charge on a retail charge account agreement, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(c) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full."

6. Page 6, line 11.

Following: line 10.

Insert: "Section 3. Merchant finance. A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits."

Renumber: subsequent sections

7. Page 6, line 11.

Following: "DATE"

Insert: "-- Termination"

8. Page 6, line 12.

Following: "APPROVAL"

Insert: "and terminates on July 1, 1983"

And, as so amended,

BE CONCURRED IN

building concession program is very important to blind people in Montana. While the total number of positions is small, probably no more than 15 will be filled during the next biennium, the persons involved in the program might not otherwise be able to find employment. We prefer to be productive members of society rather than objects of charity. It appears this program will generate revenue which will help to run the program.

SENATOR LEE: Are you hiring people for this. What is the program now.

MR. LUND: We provide the initial stock and equipment that will put them in business.

ROSEMARY ZION: Answering a question for clarification she gave the federal ruling that determined the poverty levels of farm and urban families.

REPRESENTATIVE FABREGA read and explained the part of the bill that pertained to, business-like manner, on page 8 and section 7. He stressed that the department is responsible for the operation.

With no further discussion the hearing closed on House Bill 67.

EXECUTIVE ACTION:

HOUSE BILL NO. 67: Senator Dover moved be concurred in. The motion carried with the vote unanimous. Senator Goodover will carry on the floor.

HOUSE BILLS 238 and 239: Senator Hazelbaker appointed a sub-committee composed of Senators Goodover and Regan to meet with Senators Turnage and Towe and try to work out some of the flaws in the bills.

HOUSE BILL NO. 132: Since this bill had been amended previously by the committee Senator Lee moved, as amended be concurred in. Senator Regan offered a substitute motion, not concurred in. After some discussion she withdrew her motion. By mutual consent of the committee it was agreed to table it temporarily and look at it later.

HOUSE BILL NO. 346: Senator Lee moved be concurred in. The motion carried with the vote unanimous. Senator Turnage will carry on the floor.

ROLI CALL

BUSINESS and INDUSTRY

COMMITTEE

47th LEGISLATIVE SESSION -- 1981

Date _____

$$\begin{array}{r} 3 \overline{) 118} \\ \underline{9} \\ 28 \end{array}$$
[illegible]

Each day attach to minutes.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 14, 1981

An executive meeting was held on Saturday, March 14, in room 404 of the Capitol Building at 12:20 p.m. The meeting was called to order by Chairman Hazelbaker with all members present.

HOUSE BILLS 238, 239, 321, 409, and 510 were scheduled for action.

SENATOR DOVER moved House Bill 238 "do pass as amended". The motion carried with Senators Regan and Boylan voting no. Senator Goodover will carry.

SENATOR DOVER moved House Bill No. 239 "do pass as amended". The motion carried with the vote unanimous. Senator Goodover will carry.

HOUSE BILL NO. 409: Proposed amendments were offered and explained by Senator Lee. Senator Regan commented that it should be either rental or percentage, but not both. Discussion followed.

SENATOR DOVER moved the proposed amendment No. 1.

Page 4, lines 21 through 24
Strike: Section 8 in its entirety.

The motion failed on a tie vote of 4 to 4.

SENATOR LEE moved to amend.

Page 3, lines 7 through 12.
Strike: All of section 5
Insert: "Section 5. A distributor may not require that a motion picture license agreement contain both a payment based on attendance or the box office receipts and a guarantee of a minimum payment to the distributor. However, an exhibitor may offer to license a film on a basis including both a minimum payment guarantee and a percentage of the box office receipts and, in such cases, the license agreement may contain such terms."

The motion failed on a tie vote of 4 to 4.

SENATOR LEE moved the second page of proposed amendments. Attached. The motion failed on a tie vote of 4 to 4. Senator Boylan moved House Bill No. 409 be concurred in. The motion carried with Senator Lee voting no. Senator Regan will carry.

HOUSE BILL NO. 510: Senator Lee presented proposed amendments to the committee and moved to amend.

Page 1, line 22.
Following: "bond"
Insert: "with 2 or more sureties acceptable to the governmental body letting the contract, or"

MR. **PRESIDENT:**We, your committee on **BUSINESS AND INDUSTRY**

having had under consideration

HOUSEBill No. **239****Fabrega (Senator Goodover)**

Respectfully report as follows: That

HouseBill No. **239**

third reading copy, be amended as follows:

1. Page 5, line 4.

Following: line 3

Insert: "Section 2. Section 31-1-241, MCA, is amended to read:

" 31-1-241. Finance charge limitation. (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

(a) as to motor vehicles:

(i) class 1--any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, \$7 per \$100 per year;

(ii) class 2--any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made, \$9 per \$100 per year;

DOXFASS**(Continued)**

(iii) class 3--any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than 2 years prior to the year in which the sale is made, \$11 per \$100 per year;

(b) as to any industrial or construction equipment primarily designed for or used in construction, logging, mining, or other industrial business, the price of which is over \$5,000, \$9 per \$100 per year. This subsection shall not apply to agricultural equipment.

(c) as to any manufactured structure or recreational vehicle, \$9 per \$100 per year;

(d) as to services and goods other than as provided under subsection

(1) (a), (1) (b), and (1) (c) above:

(i) on so much of the principal balance as does not exceed \$300, \$11 per \$100 per year;

(ii) if the principal balance exceeds \$300 but is less than \$1,000, \$9 per \$100 per year on that portion over \$300;

(iii) if the principal balance exceeds \$1,000, \$7 per \$100 per year on that portion over \$1,000.

(2) Such finance charge shall be computed on the principal balance as determined under 31-1-231(5) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of \$20 may be charged on any retail installment contract.

(3) When a retail installment contract provides for payment other than in equal successive monthly installments, the finance charge may be a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (1) and (2) hereof, having due regard for the schedule of payments in the contract.

(4) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for and the seller or holder may charge, collect, and receive a finance charge as specified herein for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed $1\frac{1}{2}\%$ for each such monthly period to an amount (not including any unpaid finance charge) ~~net-in-excess-of-the greatest-of, by using~~

~~(a)--the average-daily-balance-in-the-account-in-the-billing-cycle period;~~

~~(b) the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle; or~~

(Continued)

Page 3
HOUSE BILL NO. 239

~~(c)--the median amount within a \$10 range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range~~

(a) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(b) If the retail seller increases his finance charge on a retail charge account agreement, within the permitted ceiling amount, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(c) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(5) If the finance charge so determined pursuant to (4) above for such monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged, received, and collected for such period."

Renumber: subsequent sections.

2. Page 6, line 11.

Following: "DATE:"

Insert: "(1)"

Following: "ACT"

Insert: ", except as provided in subsection (2),"

3. Page 6, line 13.

Following: line 12

Insert: "(2) Section 2 is effective July 1, 1983."

And, as so amended,

BE CONCURRED IN

A central feature of the financial services industry today is the increasing number of banklike competitors with banklike powers offering banklike services -- but on a more flexible geographic basis than is available for commercial banks. Just as the Federal government cannot repeal the changes which market forces have produced, commercial banks cannot insulate themselves from the competition of nonbank entities. Either commercial banks will be permitted to evolve as efficient financial intermediaries and to meet the needs of the market under a modernized statutory structure, or the demands of the market will be satisfied outside the banking system by institutions not subject to the same restraints.

A decline in the commercial banks' share of the financial services market per se would not necessarily be a concern of government if it reflected the inability of banks to provide services comparable to those of nonbank competitors. But it is inefficient and inequitable for government to force such a decline and deprive the public of the benefits of a competitive banking system through the retention of antiquated restraints. The realization of the public benefits which a free enterprise commercial banking system can provide requires that banks be authorized to operate full-service offices on a geographic basis which is better related to the structure of the financial marketplace of the 1980s.

Critical to any assessment of the existing statutory framework is the likelihood that the early 1980s will witness the beginning of a contraction in the number of financial institutions in the United States. A wide range of forces in the financial services industry point toward some degree of contraction, yet the existing statutory structure governing bank mergers and acquisitions simply is not compatible with a rational and orderly transition to a more efficient banking structure. The forces for consolidation include:

- The elimination of consumer deposits as a cheap and stable source of funds, with resulting increasing cost pressures. Household depositors are increasingly rate-sensitive, and Regulation Q ceilings may no longer provide cost protection for depository institutions. At the same time, many depository institutions, especially thrifts, are not well positioned to weather periods of high and volatile interest rates (i.e., many institutions still have significant proportions of their assets tied up in low-yield long-term mortgages). Cost pressures, particularly on the retail side of the business, will impose the most serious strains on the profitability of many institutions, and those strains will induce a number of firms to seek affiliations with other institutions.
- Economies of scale associated with new electronic and other technologies, as well as the provision of more sophisticated services. In general, the provision of retail services as well as accounting and inventory

methods will become more automated. In the long run, many intermediate- to smaller-size banks may be placed at a competitive disadvantage relative to large firms that can afford more sophisticated data processing systems and other electronic and electromechanical devices that can reduce unit costs. Again, some institutions will perceive their interest to lie in merging or forming servicing corporations under joint-venture arrangements in order to compete successfully with others in the financial services business.

- The penetration of the "banking" business by nonbanking entities. Competition from nonbank sources -- money funds, broker/dealers, retailers, and so forth -- increasingly will affect households' demand for narrow bank services. The result will be a potential decline in bank profitability for which some individual institutions may not be well prepared.
- Many institutions will be hard pressed to achieve the capital necessary to sustain the growth of credit in the 1980s. Current limitations on bank mergers and acquisitions not only restrict opportunities for capital infusions but, in addition, may dampen investor interest in bank equities, which in turn inhibits the ability of the industry to attract new capital.

There are several important caveats to our projection of significant consolidation. Canada, Great Britain, France and West Germany combined have less than 700 commercial banks. The Administration does not believe that the United States is likely to replicate the Canadian/Western European model. Nor does the Administration foresee a financial environment which does not include a role for the specialized lender or the community bank. In a nation committed to diversity and the avoidance of undue concentration of financial power, these institutions will continue to serve important market needs. Finally, the view that pressures for consolidation will increase should not imply that the Administration perceives such pressures to be desirable; the point is simply that they exist.

The Administration evaluated the existing statutory framework by analyzing its effects in terms of traditional public policy concerns. The ultimate test should be: What is the minimum level of government interference in market structure necessary to achieve optimum public benefits? There should be a presumption against government interference in the free market system, and consumer freedom of choice should be constrained by government only to the extent that competing public policy objectives warrant such restraint. In reaching its conclusions, the Administration based its analysis on a range of broad criteria: competition, concentration of resources, economic efficiency, competitive equity, the impact on small banks, credit availability, institutional safety and soundness, the

convenience and needs of the local community, and the preservation of the dual banking system. These issues, which are discussed in depth in the research compendium attached to this report, were important in the evolution of statutes establishing geographic limitations on the structure of banking organizations.

II. Background: History of Geographic Restraints

Prior to the Civil War, there is scant evidence of strong feelings for or against branch banking in the United States. Despite Alexander Hamilton's reservations about a lack of managerial capacity, the First Bank of the United States, organized in 1791 and headquartered in Philadelphia, established eight branches in the nation's leading cities. During this period most state banks were established under special charters issued individually by state legislatures, so branching authority frequently varied from bank to bank rather than from state to state.

Branching was not mentioned in the National Currency Act of 1863, which provided for the chartering of national banks. However, subsequent interpretations of the Act and of its successor, the National Bank Act of 1864, prohibited the establishment of branches by national banks. This restriction on national bank branching was consistent with traditional public concern that concentration of economic power among a few large banking organizations might permit these institutions to exert undue influence over the allocation of national resources. However, over time the restrictions created competitive inequities as various states gave state-chartered banks branching powers.

A. The McFadden Act

In 1927 Congress adopted the McFadden Act, which authorized a national bank to branch within its home city if state law permitted a state bank to do so. This legislation has come to symbolize a policy of restrictiveness regarding geographic expansion; yet it is important to note that the Act actually liberalized then-existing limits on branching for national banks.

State banks continued to have a competitive advantage in those states which permitted branching beyond a bank's home city. To remedy this remaining inequity, Congress included in the Banking Act of 1933 a further liberalization of geographic restraints on banking to permit national banks to establish branches at any place within the state where state law permitted state banks to branch. One draft of this bill would have permitted a national bank to branch anywhere within its state and into a neighboring state within 50 miles of the home office, but this provision was filibustered out of the bill.

In essence, the Banking Act of 1933 established state boundaries as the ultimate limits for bank branching and gave state legislatures the authority to determine the branching structure within

each state. For purposes of the Act, a "branch" was defined as an office of a bank which receives deposits, pays checks or lends money.

B. The Bank Holding Company Act

Prior to the Bank Holding Company Act of 1956, banks frequently achieved geographic expansion through the formation of multi-bank holding companies (BHCs). BHCs, which first emerged during the late nineteenth century, flourished during the 1920s and again in the period following World War II. Originally most holding companies were created in an effort to expand geographically within what were otherwise unit banking states. In some instances, the multi-bank holding companies also chartered or acquired banks in other states.

By 1956, the statewide and interstate expansion of some large multi-bank holding companies had generated pressure for the enactment of legislation to restrict the growth of BHCs. The Bank Holding Company Act of 1956 was the first Federal legislation to focus exclusively on the holding company form of organization. Section 3 (d) of the Act, known as the Douglas Amendment, prohibited multi-bank holding companies from acquiring a bank in another state, unless the law of the state in which the bank to be acquired was domiciled affirmatively provided for such entry. States were permitted to regulate BHC activities within their borders to the same degree as prior to 1956. In 1970, the legislation was extended to cover one-bank holding companies and was broadened to establish standards for determining the permissible "nonbanking" activities of BHCs. The term "bank" was defined narrowly in the Act to mean any institution which accepts demand deposits and makes commercial loans. Thus, nonbank subsidiaries of BHCs can operate across state lines and perform many functions of commercial banks.

The evolution of Federal laws regarding limits on geographic expansion reflected historic concerns about undue economic concentration, competitive equality among state and national banks, and the sovereignty of states. The McFadden Act and the Douglas Amendment embody these basic principles: (1) banks and BHCs generally may not operate "full-service" banking offices in more than one state, (2) within each state, state and national banks are subject to the same restrictions on geographic expansion, and (3) each state has the responsibility to determine its multi-office structure, if any. The net result is the current patchwork of state limitations on the structure of banking organizations ranging from single-office (unit banking) restrictions to full statewide branching, and a wide variety of permissible interstate BHC activities.

III. Geographic Limitations and the Present Banking Environment

Statutory geographic restraints on bank expansion may have been responsive to the issues of public concern in the banking

markets which existed when those laws were enacted. But other legal mechanisms have emerged with the potential to deal more effectively with anti-competitive behavior, undue economic concentration and other concerns regarding bank expansion. Indeed, in today's environment geographic boundaries are counterproductive: they frequently preclude pro-competitive market entry and thus undermine the competitive objectives they were purportedly designed to achieve.

Through the first half of this century communications and transportation technology naturally constrained the geographic boundaries for most banking functions. Government intervention, custom, and economic forces promoted segmentation of financial markets along product and geographic lines. In particular, geographic restrictions on banking organizations were roughly consistent with the structure of banking markets, and until recently such restrictions did not significantly distort economic behavior.

In recent decades technological advances have greatly expanded the average consumer's geographic realm and irreversibly altered patterns of social and financial behavior. The American consumer, working, shopping, and playing, is now a mobile commuter. The consumer has also become a far more sophisticated user of financial services, sensitive to interest rate differentials and to alternatives for keeping idle, non-earning balances at a minimum. Inflation has accelerated this learning process and greatly increased the range of savings and investment vehicles familiar to consumers. In sum, the days when the individual was effectively limited to and satisfied with a handful of deposit instruments at a local depository institution have ended.

The technological forces which have changed the face of American life have revolutionized the delivery of "banking" services and the scope of "banking" markets, but statutory geographic restraints are increasingly limiting the ability of the commercial banking industry to respond in this new environment. The technological, financial, and regulatory changes which have undermined the effectiveness of geographic restrictions and imposed growing competitive disadvantages upon commercial banks are described below.

A. Commercial Bank Interstate Activity

Most commercial bank activities except for retail deposit taking are no longer subject to restraints imposed under the Douglas Amendment and the McFadden Act. For years, banks have lawfully availed themselves of various corporate devices to conduct banklike activities independent of geographic limitations. In recognition of the interstate character of the corporate financial markets, the

regulatory structure has evolved to permit the largest banks to compete nationwide for "wholesale" business; it is only the retail customer who is effectively precluded from taking advantage of the benefits of a freely competitive system.

The multi-bank holding company device permits banks to expand geographically within many states with laws restricting branching per se, although such expansion is often more costly and less efficient than the straightforward establishment of a branch. Twelve bank holding companies grandfathered under the Bank Holding Company Act of 1956 continue to do business in more than one state, and the Administration has found no compelling evidence of the concerns alleged to accompany interstate banking.

More significantly, BHCs provide a wide range of banklike services across state lines through devices such as nonbank subsidiaries. The Bank Holding Company Act Amendments of 1970 effectively allow BHCs to offer virtually any banking service, except the acceptance of deposits, on a multi-state basis. Under the 1970 Amendments, BHCs have achieved nationwide networks of consumer finance, mortgage banking and other "nonbank" subsidiaries. One holding company currently operates 13 subsidiaries, including a finance company with over 370 offices in 39 states. Approximately 350 loan production offices operate in 20 states to solicit loan business at the commercial and retail levels for the parent banks. Edge Act corporations, which had assets of nearly \$14 billion at the end of 1979, operate on a multi-state basis and offer both deposit and loan services related to international trade to business customers. The International Banking Act of 1978 substantially broadened the power of Edge corporations, authorizing the Federal Reserve to allow them to branch interstate and to broaden their operating flexibility.

Foreign banks have achieved an interstate presence in ways beyond those available to domestic banks, at least until the adoption of the multi-office limitations imposed under the International Banking Act of 1978 (IBA). The IBA brought future branching powers of foreign banks closer into line with those of domestic banks, but still grandfathered 36 foreign banking organizations conducting operations in more than one state. The IBA also extended foreign bank powers to create Edge corporations and engage in non-bank activities

More recently, attention has focused on the fact that a foreign bank may purchase a domestic bank, whereas out-of-state domestic banks are precluded from making such acquisitions. The available evidence suggests no compelling reason for additional legislation to prohibit or further regulate foreign acquisitions of United States banks on supervisory, community service, competitive or national interest grounds. To the contrary, such legislation would run counter to this nation's policy of non-intervention with respect to international investment, and special restrictions on foreign acquisitions

could damage the interests of U.S. banks abroad and perhaps those of other U.S. investors as well. It could also have an adverse effect on the health of some financial institutions, since capital injections in cases well short of failure could be precluded by the sort of moratorium in effect from April 1 through June 30, 1980, under the Depository Institutions Deregulation and Monetary Control Act of 1980.

Yet the prohibition on interstate acquisitions by domestic BHCs has created an anomalous situation which is difficult to justify on economic grounds. A foreign bank can purchase a U.S. bank, but a domestic bank which happens to be located in a different state is precluded from making a competing offer. Indeed, the combined effect of the Douglas Amendment and existing antitrust standards is that most of the largest banks in most states cannot be purchased by any bank other than a foreign one. The public interest is not well served by a system which effectively limits to foreign institutions the opportunity to acquire or merge with many domestic banks. The interests of individual banking institutions, investors and the banking public would be enhanced by a framework providing domestic banks with greater flexibility in identifying appropriate partners for merger or acquisition on an interstate basis.

B. Thrift Institution Competition

The McFadden Act and Douglas Amendment restrict competition among banks but cannot insulate banks from the competitive impact of thrift institutions. Thrift institutions are not subject to the statutory framework which governs geographic expansion by commercial banks, but the thrifts' broadened asset and liability powers will increasingly make them direct competitors on the retail side of the banking business. Recent legislation and regulatory reforms are expanding the capabilities of thrift institutions to offer new products and services -- such as NOW accounts, large CDs and consumer lending -- competitive with those traditionally offered exclusively by commercial banks. Indeed, thrift institutions will increasingly look like retail-oriented banks in the future. As these powers are implemented, the effects of the banks' competitive disadvantage vis-a-vis geographic expansion will become more visible.

Traditionally, the Federal Home Loan Bank Board (FHLBB), which determines the branching authority of Federally-chartered savings and loan associations (S&Ls), had established branching powers for these institutions in each state similar to the branching restrictions on state-chartered S&Ls, savings banks, banks, and BHCs. But as of January 1, 1980, the FHLBB has permitted full intrastate branching by Federally-chartered S&Ls in all states. Moreover, while the FHLBB has not yet approved establishment of S&L branches outside the home state, it is considering a proposal to allow Federal S&Ls headquartered in the Washington, D.C. SMSA to establish branches throughout the District of Columbia and the parts of Maryland and Virginia in the SMSA. If S&Ls in the Washington, D.C. SMSA are freed from existing restraints on geographic expansion

within the SMSA, the Administration believes that this action would serve the public interest and provide useful information on the impact of a less restricted statutory framework.

Mutual savings banks (MSBs) generally are state-chartered institutions subject to state branching restrictions. Recent legislation permits MSBs to obtain Federal charters which would allow MSBs, with FHLBB approval, to branch anywhere intrastate despite a more restrictive state law. Credit unions are mutual institutions limited to groups with a common bond or affinity and therefore tend to be small, local organizations with one office; however, if the common bond requirement is satisfied, a credit union may branch nationwide or even worldwide. For example, the Navy Credit Union, with almost \$1 billion in assets, has worldwide offices.

C. Nondepository Institution Competition

Perhaps the most dramatic change in the structure of the financial services industry has been the recent and accelerating penetration of what was formerly the "banking" business by non-depository institutions. Brokerage firms can compete for "deposits" nationwide by paying interest on idle balances in a customer's brokerage account. This process has moved a significant step further through the development of a "cash management account", which allows an account holder to draw interest on idle balances, to access the account for third-party-payment purposes by means of a check-like instrument, and to draw credit against the account by means of a credit card.

Money market mutual funds have become an important element in the competition for savers' funds. The money fund has in effect reduced the minimum denomination of a bank certificate of deposit from \$100,000 to as little as \$500 but without interest rate restrictions. Money funds issue what is in effect a liquid liability to savers and use the proceeds to purchase bank certificates of deposit and other high-yield, short-term, relatively riskless instruments. Many money funds allow deposits in almost any amount and most funds offer checking services -- so that the customer enjoys many characteristics of an interest-bearing transaction deposit, though one which is not Federally insured. Finance companies and retailers with a nationwide presence make loans to individuals and businesses, and such companies may issue uninsured, small-denomination, deposit-like liabilities in competition with banks. Mortgage companies, insurance corporations and credit card companies also

offer products and services similar to those of banks with little or no governmental constraints on geographical expansion. As the range of nondepository institutions in the "banking" business broadens, their freedom to apply new technologies without geographic limitations will provide them with an increasingly critical competitive advantage in the 1980s.

D. Technological Advance

New technologies have the potential to virtually eliminate time and space restrictions on the delivery of financial services. Just as the telephone and airplane induced the liberalization of geographic restraints on the wholesale side of banking, off-premise electronic devices are straining geographic limits on the retail side. Recent advances in transportation, communication and computer technology have made physical proximity to the customer a less important consideration in the market for financial services. Because a customer has access to most banking functions without even entering the traditional brick-and-mortar branch, geographic restrictions based on the location of physical branches are no longer an effective means of limiting the range of banking markets. Yet the application of the McFadden Act to cover electronic banking facilities produces distortions, inefficiencies and discrimination against the retail customer.

Today, bank customers need no longer queue up at their local branch to conduct their banking business. Billions of dollars are transferred almost instantaneously to the other side of the world through sophisticated electronic networks; automated teller machines (ATMs) provide round-the-clock service and relieve customer congestion at banks; deposits are made by mail, or automatically from payroll departments using electronic tapes; customers can use the telephone to transfer funds among accounts or between institutions; in the 1980s, the consumer will be able to engage in telephone and television banking through computers at home. Over the coming decade the combination of card, telephone and mail systems is likely to be developed to provide all the banking functions currently performed by brick-and-mortar branches.

In addition to its contribution to pressures for consolidation which were cited earlier, this technological revolution has three major implications. First, technology will be a major catalyst in extending the "banking" business beyond depository institutions to include non-traditional participants ranging from retail chains to department stores to large corporations such as oil, telephone or television companies. Second, the ever more sophisticated and versatile technology available to those who choose to use it will widen the gap between the banking services the public demands, and the services many commercial banks can offer. The wider the gap becomes, the greater the incentive will be for financial institutions not subject to geographic restraints to pursue the opportunities presented.

Finally, these new technologies have the potential to reduce costs and provide increased customer convenience; but the cost/convenience promise has not yet begun to be fully realized, in part due to regulatory distortions. A recent court ruling has determined electronic funds transfer (EFT) terminals to be branches for purposes of determining permissible placement of automated teller machines (ATMs) and, indeed, most ATMs are located at the site of a physical branch. Thus, the Federal statutes, as interpreted by the courts, have slowed the development of cost-saving, convenience-enhancing financial service innovations -- to the detriment both of bankers and their customers. Such limitations are most restrictive on household, small business and agricultural customers. Large corporations have access to competitive national -- even worldwide -- markets for their borrowing needs, via commercial paper, acceptance financing, or loans from a worldwide network of money center banks, and for investment alternatives such as repurchase agreements, large negotiable CDs and other market instruments. Thus, such larger corporations typically do not depend on physical proximity of a brick-and-mortar branch or ATM facility to conduct their financial business.

IV. Geographic Expansion and Public Policy Issues

Several additional issues must be considered in the analysis of geographical restrictions and the prospects of liberalization: competition and concentration, credit availability and service to the local community, the survival of small banks, the safety and soundness of the banking system, and the dual banking system. The report finds that liberalization (1) could improve competitive conditions in local markets and, subject to the establishment of appropriate controls, would not raise significantly the risk of undue concentration of economic power; (2) would increase the range of financial services available to local communities but would have little impact on credit availability; (3) does not pose a significant threat to the viability of the small bank as an institution; (4) would not have a material impact on the safety and stability of the banking system; and (5) need not threaten the vitality of the dual banking system.

A. Competition and Concentration

The empirical studies of banking markets cited in the research compendium generally support the theoretical proposition that price and quality performance in banking is improved through greater actual and potential competition promoted by low barriers to entry, and through lower concentration of economic power in the relevant markets for banking services. Existing restraints on geographical expansion create artificial, arbitrary barriers to entry and therefore are

anti-competitive. On the other hand, relaxation of these restraints could lead to increased concentration in some markets.

Higher levels of concentration have been found statewide and in SMSAs in states which permit branching than in either limited branching or unit banking states. However, even if liberalized geographic expansion does increase market concentration in some cases, the negative competitive effects of increased extant concentration likely are outweighed by the new entry potential in a jurisdiction which permits branching. That is, an aggressive firm can achieve a substantial market share in a free-branching environment, but such a firm must continue to offer low prices and high quality in view of the potential new entry (i.e., a new branch) by an outside rival. The beneficial impacts on bank performance of liberalized entry are likely to be most substantial in those states where intrastate limits are now most restrictive. For example, compared to single-office banks in statewide branching states, single-office banks in unit branching states were found to have lower operating costs and pay lower interest to depositors, but charge similar rates to borrowers; that is, they have used their protected market status to earn higher rates of return. Liberalization of restrictions on multi-office expansion would remove the protective barriers to entry -- immediately increasing potential competition in all local markets, and, with de novo and foothold entry, eventually increasing actual competition.

Quite apart from the traditional debate over the impact of multi-office structure on concentration and competitive performance of retail banking in local markets, a concern has been expressed about the effects of concentration on national banking markets. This concern prompts some to worry about increased concentration leading to anti-competitive behavior in wholesale banking and, on a more philosophical level, about undue concentration.

Such concern is not consistent with recent historical trends, however. The domestic commercial bank share of both national and world markets for banking and financial services has been on the decline in recent years, despite liberalization in many states of intrastate banking laws. The commercial bank share of financial assets at depository institutions generally has also dropped. While these trends might be altered by the liberalization of existing geographic restraints, and while the potential for unrestricted branching leading to a possibly undesirable increase in national concentration in banking cannot be ignored, it is not a compelling reason to maintain the current inefficient and inequitable restrictions. The prevention of undesirable concentration in both local and national banking markets can be addressed more effectively through alternative legal mechanisms, the most important of which is the body of antitrust laws.

When the Douglas Amendment was enacted, there was some question whether banking was subject to the antitrust provisions of the

Sherman and Clayton Acts. These issues were resolved through court decisions and legislation in the 1960s, making it clear that bank expansion through acquisition was subject to the antitrust laws and, in addition, to antitrust criteria which are applied in the first instance by the bank regulatory agencies. By dealing directly with competition in individual markets, these antitrust constraints are a more sophisticated means of dealing with market concentration than are artificial state boundaries. In considering applications for branches, mergers or acquisitions, the bank regulatory agencies must consider the effects of the proposed transaction on existing competition in the relevant market areas, as well as on potential competition and probable future competition. Moreover, the regulators consider the effects on the "convenience and needs" of the bank customers, the financial condition of the expanding bank and -- if applicable -- that of the bank to be acquired, and the effects on the financial conditions of other banks.

Some question may remain as to whether the present body of antitrust laws as interpreted by the courts would apply in the case of a large bank or BHC acquiring another bank with substantial market share in another geographical market where no existing local competition is eliminated.^{1/} Such reservations suggest that it is undesirable to move immediately to unrestricted nationwide branching. A more moderate liberalization initially should include safeguards designed to complement existing antitrust laws, thereby allowing the pro-competitive aspects of intra- and interstate expansion to develop while minimizing the prospect of a significant increase in nationwide concentration. Such safeguards could include, for example, limits on regions or product markets to be entered or on the size or market share of banks in new geographical markets that might be acquired, in other than emergency circumstances.

B. Service to Local Communities

Multi-office expansion has been shown to be associated with more bank offices per capita and a wider range of financial services for local communities. Studies also suggest that bank expansion, on balance, can result in a greater proportion of loans to locally limited customers than where expansion is limited. Moreover, there

^{1/} The Bank Holding Company Act expressly calls for consideration of "undue" concentration in acquisitions of nonbanking firms, and the Federal Reserve has applied this consideration to deny acquisition of nonbanking entities by bank holding companies. Since 1967, eleven cases have been brought before the courts to prevent mergers of banks in different markets on the basis of elimination of potential competition; none has been successful.

is no evidence to support the claim that banks use outlying branches to transfer funds to head offices in urban areas; rather, banks transfer funds among rural offices as dictated by needs.^{1/} These findings, combined with findings regarding more competitive bank price and profitability performance in statewide branching states versus unit banking states, demonstrate that the convenience and needs of the community may be enhanced through a liberalization of geographic restraints.

C. Viability of Small Banks

While concern has been expressed that geographic liberalization could lead to the disappearance of the small bank, such concern is not supported by evidence from the past. Economies of scale, if any, have been small, have diminished rapidly with size (with little improvement in efficiency for banks above \$50 million), and have varied with organizational structure and product line. Furthermore, where branching laws have been liberalized, smaller banks have survived and even prospered under the pressures of new entry. More directly, the present broad mix of large and small, unit and branch, and independent and affiliated banks existing as competitors in the same markets is ample testimony to the ability of small banks to compete with large institutions. In California, for example, despite the largest branching networks in the country there exist over 75 independent unit banks serving local communities, and California is among the leading states each year in the number of newly chartered banks. Further evidence of the staying power of efficient small banks with a hold on local loyalties is found in the resistance met by the New York City banks in their efforts to penetrate the upstate New York markets after state branching laws were liberalized in the early 1970s. In sum, permitting multi-office expansion would result in a banking industry more diversified as to size, services rendered, and organizational structures.

^{1/} Furthermore, recent legislation is designed explicitly to induce insured institutions to meet the credit needs of the local communities in which they are chartered. The Community Reinvestment Act of 1977 (CRA) directs the bank supervisory agencies to consider an institution's CRA record in evaluating any application for a charter, deposit insurance, branch or other deposit facility, office relocation, merger, or acquisition. CRA also requires that, in connection with the examination of a financial institution, the appropriate supervisory agency shall "assess the institution's record and encourage it to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of such institution."

This is not to suggest that relaxation of geographic restraints would not bring about any structural changes including a reduction in the number of banks. Clearly, it would. However, structural change will occur with or without the relaxation of geographic restraints in response to market forces. Without relaxation of geographic restraints, the response to these forces will be less efficient than otherwise. With relaxed geographic restraints, commercial banks will have additional alternatives for maintaining or enhancing market share and achieving economies through geographic expansion, internally or by affiliation with other banks, large or small. Competition in banking would be protected by the antitrust laws, increased potential competition from banks, and increased competition from nonbank competitors.

D. Safety and Stability of the Banking System

Multi-office expansion does not have any appreciable effect on the safety and soundness of individual banks. Theoretically, geographical diversification, other things equal, ought to reduce risk; however, empirical studies are inconclusive on this point. More broadly, liberalization may in fact lead to greater continuity and stability in financial markets generally. Weak or failing banks could be acquired or merged into existing banks with no interruptions or inconvenience in the provision of banking services to bank customers in the local communities, an opportunity not available if only unit banking is permitted. Moreover, the merger partners available in the presence of wider branching authority may be more consistent with antitrust considerations.

E. The Dual Banking System

It is frequently argued that a change in existing geographic restraints would severely damage the dual banking system. Of foremost importance is the recognition that the dual banking system is not dependent upon state authority over geographic limits on bank expansion. The essence of the dual banking system lies in its provision of alternative routes of entry into the business of banking and alternative sources of regulation and supervision. The relaxation of geographic restraints need not in any way jeopardize this system.

Furthermore, liberalization of geographic restraints can be accomplished in ways that have virtually no impact on the existing prerogatives, responsibilities and activities of state bank regulators -- namely, through modification of the Douglas Amendment. By this avenue, the benefits of relaxed geographic restraints could be achieved while continuing to allow affiliated banks to choose

between state and Federal agencies as their primary supervisor and without creating the potential administrative problems associated with the interstate supervision of a branch network of a state-chartered institution.

V. Recommendations

On the basis of the empirical and analytical findings of the financial regulatory agencies, and in line with the analysis set forth in this report, the Administration has concluded that the interests of banking consumers and the financial system would be served by significant liberalization of existing geographic restrictions on the provision of banking services. The Administration's major conclusions and recommendations are set forth below.

1. The Administration has concluded that the McFadden Act, as amended, and Section 3(d) of the Bank Holding Company Act are increasingly ineffective, inequitable, inefficient and anachronistic, and that the existing de facto system of interstate banking should be ratified and further liberalized through a phased relaxation of current geographic restraints. Since government shaped the financial world that presently exists, government is obliged to create conditions which will permit an orderly evolution to a new financial environment. Liberalization of geographic limitations should be accomplished in stages to avoid short-run instability and should be designed to foster a competitive and relatively unconcentrated system of financial intermediaries.

There are two ways through which the benefits of a liberalized geographic framework could be achieved: through modification of the McFadden Act, or through modification of Section 3(d) of the Bank Holding Company Act, the so-called "Douglas Amendment." While either approach could be structured to achieve a more pro-competitive and equitable financial environment, the evidence is inconclusive as to which approach is superior. As a transition to a liberalized statutory structure, however, a modification of the Douglas Amendment would have a less intrusive impact upon many institutions and the existing regulatory structure.

Interstate expansion through BHC acquisitions should be viewed as less disruptive in terms of the dual banking system than would interstate branching authority. First, conferring interstate branching powers upon Federally-chartered banks would effectively require the states to give comparable authority to state-chartered institutions or witness large numbers of conversions to national charters. Second, interstate branching authority would create jurisdictional problems for state regulators who, under current law, could not cross state lines to examine the records of a branch head

office; multi-state examination authority for state regulators would be necessary to overcome this difficulty if interstate brick-and-mortar branching for state-chartered institutions were permissible. In the Administration's view, these byproducts of interstate branching would not spell the demise of the dual banking system, but they would alter the character of that system more substantially than would interstate acquisitions.

Authority for interstate acquisitions -- i.e., the Douglas Amendment approach -- would obviate these problems. First, this route would avoid the jurisdictional problems cited above: books and records would be kept at each subsidiary bank's headquarters, a subsidiary bank would be domiciled where it was located, and there would be no necessity to cross state lines for examinations. Second, the interstate acquisition approach would preserve each state's control over its multi-office banking structure. Once an out-of-state BHC chartered a new bank or acquired an existing one in a particular state, the newly chartered or acquired institution would be subject to the structural laws of the state in which it was located. Thus, in a unit banking state that did not permit multi-bank ownership by BHCs, an out-of-state BHC could purchase only one in-state bank, and could not then open any branches of that bank. There is ample precedent for multi-state BHCs, and the Administration has not found meaningful evidence of any of the problems which purportedly would accompany interstate banking. Finally, the interstate acquisition route would be relatively more attractive for many institutions, particularly smaller institutions, already operating in a given market; this factor will be particularly important if the Administration's assessment of the forces favoring some consolidation of the financial services industry is correct. Liberalization of the Douglas Amendment would give these institutions the choice of affiliating with a potential outside competitor or continuing as an independent bank -- and one conclusion of this report is that small independent institutions have historically been able to withstand competition from new competitors, albeit with the pro-competitive result of lower prices for financial services and an attendant reduction in earnings.

In view of these considerations, the Administration recommends that over the short term the Congress enact a phased liberalization of the Douglas Amendment. To accommodate the concerns of banks which have relied upon the existing framework, this deregulation might be accomplished in stages. For example, Congress could consider initially restricting interstate acquisitions by imposing limits on the markets that might be entered -- e.g., interstate acquisitions might be limited to a regional basis. Alternatively, or in addition, Congress might impose limits on the banks to be acquired -- e.g., a bank eligible for acquisition by an out-of-state BHC could not hold more than a specified percentage of local market share.

With respect to the McFadden Act, this report has set forth the Administration's view that the effectiveness of this legislation is

being steadily eroded by market forces. But to the extent that restraints on branch banking succeed in impeding the expansion of retail deposit taking and related activities, those restraints are anti-competitive. And to the extent that the restraints are circumvented, that circumvention entails a cost which will weaken earnings or be passed on to bank customers. McFadden Act restraints also impose inequities on banks vis-a-vis their nonbank competitors and on the average customer vis-a-vis wealthy individuals and major corporations, for whom geographic convenience is frequently a relatively unimportant factor in establishing banking relationships.

The adverse effects of branching limitations are most pronounced in those states which continue to place tight restrictions on geographic expansion by their banks. If these restrictions continue, banks in those states may find themselves at a serious competitive disadvantage in the evolving financial services environment. In these markets in particular, significant improvements in bank competition and performance could be achieved through the relaxation of restraints on intrastate multi-office banking. Therefore, the Administration strongly urges those states to enhance the opportunities for consumers of bank services by liberalizing restrictions on intrastate geographic expansion. In addition, in principle the Administration expresses its support for interstate reciprocal compacts, although this support is tempered by the recognition that arrangements which will be perceived as equitable by two or more states are not easily achieved.

As part of a phased liberalization of existing geographic restraints, this report has recommended that the Congress focus initially on relaxation of the Douglas Amendment. However, over the longer term, the Administration recommends that the Congress consider what changes in the McFadden Act as it applies to brick-and-mortar facilities might be appropriate in view of the findings of this report. For example, the Congress might consider permitting unlimited intrastate branching or interstate branching within "natural market areas" such as SMSAs for Federally-chartered institutions.

2. The Administration believes that the deployment of EFT terminals ought to be subject to less onerous geographic restrictions than those imposed on brick-and-mortar branches, and that this modification of the McFadden Act should be undertaken along with liberalization of the Douglas Amendment in the first phase of geographic deregulation.

Initially, deployment of EFT terminals should be permitted on a statewide basis and within SMSAs which cross state lines for all banking services, including deposit taking. Nationwide EFT deployment should be permissible at a later date.

The expanded deployment of EFT terminals would bring added convenience to the banking public and, given sufficient volume, EFT networks should result in cost savings to both financial institutions and their customers. EFT terminal deployment would not directly alter the dual banking system; state agencies still would regulate the expansion of state-chartered firms and still would, at least at this time, determine the banking structure with respect to brick-and-mortar branches in their respective states.

There is some concern that liberalization of EFT deployment restrictions would tend to benefit the larger banks that can take advantage of scale economies. In fact, the great majority of EFT terminals at present, and probably in the immediate future, are off-line, self-contained units to which scale economies do not significantly apply. Also, sharing of EFT networks among depository institutions would mitigate any tendency for EFT development to foster a concentration of resources, and appropriate antitrust standards could be designed to minimize any such tendency.

3. Interstate BHC acquisitions to accommodate the "failing bank" problem should be authorized.

Enactment of legislation to permit the interstate purchase of a financially troubled or failing bank by another domestic bank or BHC could substantially ease the regulatory problem of finding a suitable merger partner for a troubled firm, especially if the distressed bank is a large one. Each of the Federal depository institution regulatory agencies supports enactment of such legislation, which also would eliminate the present anomaly whereby foreign banks, but not out-of-state domestic banks, may be candidates to purchase a distressed institution.

It is critically important that acquisitions of financially troubled institutions be accomplished in a manner which is efficient and which promotes competition or at least does not significantly increase concentration. Thus, the statutory framework should give the Federal deposit insurance agencies the widest possible latitude in effecting a merger between a troubled and a healthy institution -- and this means choosing from the largest possible pool of "marriage partners," including out-of-state partners.

A preferred method of achieving this end would be to adopt the draft legislation proposed by the Federal Financial Institutions Examination Council in early 1980. The proposed bill -- the "emergency bank acquisition bill" -- would expand the flexibility of the Federal regulatory agencies when deciding the disposition of large failing depository institutions and when otherwise extending assistance to troubled institutions.

The bill would amend the Bank Holding Company Act and the Savings and Loan Holding Company Act, authorizing the Federal

Reserve Board and the Federal Home Loan Bank Board to permit interstate holding company acquisitions in certain extraordinary situations. Such a situation would exist if the Examination Council determined, with at least four members concurring, that an intrastate alternative was not feasible for the acquisition of a large insured commercial bank, savings and loan association, or mutual savings bank in receivership; i.e., a commercial bank with assets in excess of \$1.5 billion, a thrift with assets in excess of \$1 billion, or one of the three largest such banks or thrifts in the state.

Other provisions of the proposed legislation would give the regulatory agencies more flexibility in extending assistance to troubled depository institutions. For example, the FDIC would be authorized to make loans to, purchase assets of, and make deposits in an insured bank which might otherwise be in danger of closing. The FHLBB would be allowed to suspend temporarily the requirement that the Federal Home Loan Banks semiannually carry to their reserve accounts 20 percent of net earnings. It would also be able to authorize the regional Banks to make dividend (or other) payments to their members out of their reserves, and to charter a Federal stock savings bank or S&L to acquire an association or savings bank in receivership. The NCUA would be authorized to act as conservator for a failed insured credit union, while the Share Insurance Fund and the Central Liquidity Facility would gain flexibility for the purpose of assisting troubled member institutions. The authority of the National Credit Union Administration to permit the merger of a troubled credit union with another CU also would be extended by this legislation.

In view of the pressures which the current economic and financial environment is likely to impose on many depository institutions, the Administration believes that the Congress will ultimately want to consider preserving the authority of the regulators to permit mergers between healthy bank and thrift institutions. Opportunities for cross-industry mergers and acquisitions would provide depository institutions with a degree of flexibility which may prove vital in the difficult competitive climate likely to characterize the financial services industry in the 1980s. Over the immediate term, however, the Administration regards the enactment of the limited "failing bank" legislation described above as critically important.

Amendment to HB 238

1. Page 5, line 9.

Following: "date"

Insert: " -- termination"

2. Page 5, line 10.

Following: "approval"

Insert: "and terminates on July 1, 1983"